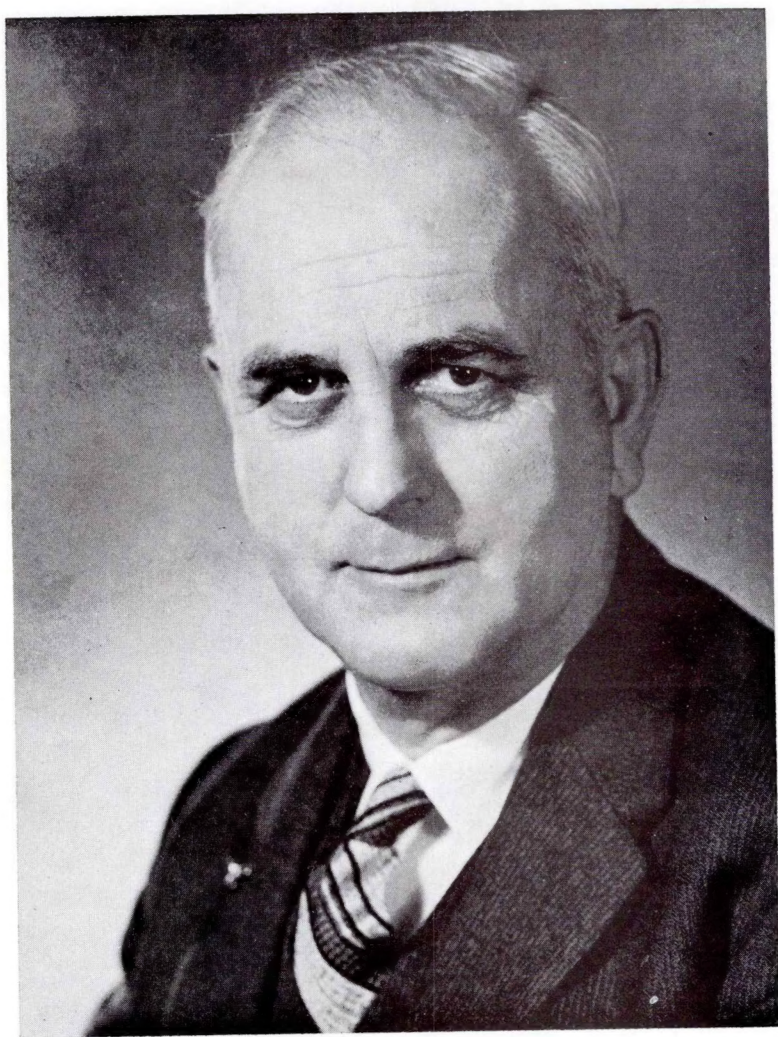


CRIME IN NEW ZEALAND



THE HON. J. R. HANAN, MINISTER OF JUSTICE

CRIME

IN NEW ZEALAND

DEPARTMENT OF JUSTICE
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FOREWORD

This book presents a picture of some aspects of crime in New Zealand. The object is to give the facts so far as they are known and to provoke consideration of the issues to which they give rise.

The study includes statistical information to the extent that it is available. The law and administrative procedures are described and where appropriate psychological and sociological factors are discussed. This factual background is essential for informed consideration of the criminal scene. Inevitably interpretations are made and a variety of opinion is offered. It was not the purpose of the Department to produce a colourless official document devoid of all contentious matter. Although there has been a measure of co-ordination, diversity of opinion and spontaneity remain.

It would therefore be difficult to agree with everything that is said or suggested. But agreement is unimportant provided the reader keeps in mind the object of the book. No person who reflects can be satisfied with the situation today. Therefore we must seek more promising remedies. The urgent task is to commit data and ideas to print so that people within and beyond the Department may participate in the search for better results.

Case histories are used freely. The decision to publish them was made only after anxious reflection, but we finally judged that without referring to actual cases authenticity and authority could have been seriously impaired. Moreover the details of cases provide an aid to further study and research. To preserve anonymity, all initials used in these case histories are fictitious.

The work proceeded under a plan formulated by the Secretary for Justice, J. L. Robson, and he acted as chairman of an editorial committee which included E. A. Missen, Deputy Secretary for Justice, B. J. Cameron, Chief Advisory Officer, and D. F. MacKenzie, Director of Research. The last two also contributed a great deal to the writing. Other writers were G. G. Armstrong, Mrs M. Barker, Mrs M. G. Greig, Miss P. J. Grover, Mrs G. M. Killalea, and Mrs J. P. Roberts. We are also indebted to Miss E. G. Avenell, Miss P. M. Webb, D. E. Bateup, I. J. D. MacKay, and R. C. Te Punga for their critical scrutiny and revision of particular chapters. All these persons are officers of the Department of Justice.

Early drafts of this work were brought to the notice of the Chief Justice, Sir Richard Wild, and other Judges, and Stipendiary Magistrates.

We also sought help on specific questions from Mr Justice McCarthy of the Court of Appeal, Judge Thomson, now of the Court of Arbitration, and Sir John Barry of the Supreme Court of Victoria. The Chief Justice suggested that a worth-while study would be to follow up careers of men and women released from life imprisonment. A study of sentencing was also suggested. These may appear in a subsequent work. I record here my deep appreciation of the help we have had from all these judicial officers but I must make plain that they cannot be held responsible for any part of this work if only because many changes have been made in substance and in mode of presentation since it was perused by them.

The writers were also helped by comments and suggestions from Professor W. Ironside and Dr Basil James of the University of Otago, Mr I. F. McDonald and Mr John Seymour of the University of Auckland, and Dr S. Mirams and Dr John Hall of the Department of Health. Mr John Hardingham, Deputy Editor of the *New Zealand Herald*, kindly read the final drafts and gave valuable help on matters of presentation and style.

Though many have helped in its compilation, final responsibility for the publication must rest on my shoulders as the Minister. I believe that this book not only presents a useful picture of New Zealand criminal behaviour but that it makes a significant contribution to further development in penal method and administration.

A handwritten signature in dark ink, reading "J R Hanan". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

MINISTER OF JUSTICE.

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1911

1. The first of the year was a very cold one, with much snow and ice. The weather was very disagreeable, and the people were much distressed. The crops were all killed, and the people were forced to live on their stocks. The government was very kind to the people, and gave them much assistance. The people were very grateful to the government, and they all lived happily ever after.

2. The second of the year was a very warm one, with much rain and wind. The weather was very pleasant, and the people were much pleased. The crops were all growing well, and the people were very happy. The government was very kind to the people, and gave them much assistance. The people were very grateful to the government, and they all lived happily ever after.

Chapter 1

THE FACE OF CRIME

As a factual study of crime in New Zealand, this book is deliberately selective, and it makes no pretence to be a text book of criminology. It deals with murder and suicide, with lesser crimes of violence, with abortion, with sexual offending, offences of dishonesty, "petty" offending, and with offending by women. There is a separate chapter on cruelty to children.

In addition, a chapter discusses the practice followed in bail and remand cases—a sole incursion into the field of practice and procedure apart from a discussion of the police approach to murder cases. There is also a study of corporal punishment which, despite its abolition in 1941, remains a live issue in New Zealand. A final chapter makes observations on the background of criminal behaviour and the approach of the Courts to the sentencing of offenders.

All are subjects of practical importance to the student of crime in New Zealand. Apart from a discussion of capital and corporal punishment, not a great deal is said about the sentences that are, or have been, available to the Courts. Such a topic is so wide in scope that it would justify a separate volume even if only the material now available were taken into account. However, the final chapter contains some general observations on this subject.

The survey may seem to travel beyond the boundaries of crime proper in examining suicide as part of a study of homicide. The information gathered, however, not only appears to be of intrinsic interest but it also shows a very significant association between murder and suicide.

The depth of the treatment has been largely dependent on the material available and to some degree on the size of the territory covered. Thus, because murder is an uncommon crime, it has been possible to study and analyse the cases in much greater detail than with lesser crimes of violence or with offences of dishonesty.

Inevitably, the survey cannot deal with most offences committed. By far the majority of convictions in New Zealand are for traffic offences. Setting them aside, it is still true that more convictions are entered for, say, breaches of the liquor laws than for such common and "conventional" crimes as assault or theft.

In 1965, for example, the number of persons convicted for various breaches of the Sale of Liquor Act were as follows:

Selling liquor after hours.. ..	305
Miscellaneous breaches by owner or employee (mainly supplying liquor to minors)	219
Being unlawfully on licensed premises after hours ..	1,518
Miscellaneous breaches by public (mainly minors on licensed premises)	1,297
<hr/> Total	<hr/> 3,339 <hr/>

In addition, 889 persons were convicted of having liquor in, or near, a dance hall.

During the same year 2,548 persons were convicted in the Magistrates' Courts for offences against the person; a further 194 persons were sent on to the Supreme Court for trial or sentence. Of the convictions, 1,299 were for common assault.

In 1965, 5,651 persons were convicted of various offences against property. Theft accounted for 2,589 of these cases.

No attempt is made to discuss what are frequently referred to as "social welfare offences". These may be loosely defined as breaches of Acts or regulations which are designed to enforce certain standards in the performance of lawful activities which may result in harm of one sort or another to the public.

Many citizens are probably entirely unaware of literally thousands of offences created by both Acts and regulations. They deal with such subjects as public health and safety, the protection of primary industry, the duties of employers, and the regulation of entry into, and the conduct of, particular businesses and occupations. The obligations which they impose are almost invariably backed by criminal sanctions.

Any attempt to analyse social welfare offences or to offer any generalisations about them is beyond the scope of this book. In passing, however, it may be noted that such offences often punish not merely acts (to which the traditional law is almost entirely confined, apart from the crime of manslaughter) but also omissions. They require a person not merely to refrain from doing certain things but to perform certain positive acts at the peril of conviction by the Courts. In many cases, too, they are offences of strict liability—that is, guilt is not dependent on the defendant's intention, or upon recklessness or even negligence on his part.

Sometimes—as in the Indecent Publications Act 1963—the element of strict liability is spelled out. More often it is left to be implied, a situation that can cause difficulties to the Courts and uncertainty to the citizen. As a digression, it might be suggested that in the preparation of any piece of legislation creating offences, more care should be taken to specify as clearly as possible the mental element required for criminal liability.

For the most part, the community does not regard social welfare offences in the same light as the more "traditional" crimes. Those who commit them are not popularly regarded as "criminals". A similar attitude certainly tends to apply to traffic offences, including even serious breaches which result in death or injury to others. If these offences are not exactly condoned, they do not appear to carry serious moral blame. The offender is felt to be unfortunate rather than wicked.

One may fairly question how far such a distinction is justifiable. Assessing the harm done both to the individual and to the community, it would seem that many such offences are no less reprehensible than, for instance, petty theft and indecent assault.

Nor does the survey concern itself with breaches of what, for want of a better term, may be called "moral improvement" legislation—notably the gaming, liquor, and Sunday-trading laws. The number of offences committed against these enactments is probably extremely high and is out of all proportion to the number of convictions, even if the numerous liquor law convictions are taken into account. Such offences do not normally carry any social opprobrium; they represent an attempt to impose a standard of behaviour in fields where there is no common agreement as to the justice or the wisdom of the standard.

The gap between the law and social habits is seen very clearly in the two most common liquor offences of 1965—drinking after hours, and drinking in hotels under the legal age of majority. The rules which previously closed hotels to drinkers at six o'clock and still debar persons under 21 from being supplied with liquor on, or from, licensed premises were enacted with the highest of motives by altruistic reformers. That many people still favour the retention of restrictive hours was shown in the referendum of 1967. It is plain, however, that a large section of the public saw nothing wrong with drinking after six or with persons approaching the age of majority drinking in hotels. Those affected resented what they regarded as an unreasonable restriction on their liberty. Law-breaking was common and condoned (though perhaps not approved) by many who would themselves refrain from infringing the prohibitions.

The time has gone to debate the rights and wrongs of six o'clock closing, and this is not the place to discuss drinking by minors in hotels. What is relevant to our theme is that we have here a classic illustration of a situation common in Anglo-Saxon countries where one section of the community tries to enact a standard of behaviour and impose it on all. Although the consequences are somewhat muted by the generally docile nature of New Zealand society, real evils do result.

Such legislation inculcates a contempt for a law that is regarded as unreasonable, affecting in turn attitudes to law in general, both on the part of those who break it and by others who strive to comply. This contempt for the law is accentuated by the creation of inherently absurd situations as, for example, the exclusion of an adult couple with a baby in a pram from a beer garden.

It also creates serious difficulties for the police. In the first place they are exposed to pressure not to enforce the law—pressure that may be accompanied by attempts at bribery. Second, in attempting to enforce the law, the police attract an unpopularity that detracts from their image in the public mind and from their ability to secure public co-operation. Third, the need for the police to give attention to enforcing the liquor laws takes up time that might better be devoted to the prevention and detection of more serious crimes.

This book also refrains from treating certain "traditional" crimes. For example, little or nothing is said about forgery, bigamy, extortion, bribery and corruption, and perjury. All these offences are committed in New Zealand but prosecutions are not frequent and, in practice, they do not seem to be regarded as posing a serious threat to society. On the whole they make little emotional impact.

New Zealand has hitherto not had to contend to any appreciable extent with such problems as organised prostitution and the call-girl racket, standover and protection rackets, criminal syndicates, or narcotics, although the evil of drugs is a growing threat. There is no justification for thinking that New Zealanders possess any special virtues to immunise them against evils prevalent in other lands. Indeed, as urbanisation extends—and Auckland already has a population of nearly 600,000 people and continues to expand at a rate of 20,000 a year—we must expect at least some of these ugly trades to gain a foothold unless they can be restrained by the dedicated work of the police.

The main lesson to be drawn from the studies that make up this book is how little we know and how cautious we should be in attempting to generalise or to present any simplified theory of criminal behaviour or criminal causation. Yet certain points may be made.

ABNORMALITY AND ALCOHOLISM

There is a significant association between mental abnormality, alcoholism and sexual deviance, and crime, not merely in such obvious fields as murder and sexual offending, but also in offences of dishonesty, vagrancy, and so on. To point to this association is not to fall into the trap of the hypothesis that all crime is simply a disease. Butler's *Erewhon* has no counterpart in the real world so far as our evidence goes; to suggest that crime is simply the product of disease is as gross an over-simplification as the old idea that all criminals were simply wicked.

There is some evidence of these associations even in the unlikely sphere of traffic offences. This evidence is tantalisingly meagre, and a really comprehensive study within New Zealand would be of great value.

In considering the link between liquor (and particularly alcoholism) and crime, it is legitimate to ask whether alcohol is the real villain or whether addiction to alcohol is merely one of the means through which a defective personality manifests itself. If alcoholic liquor could effectively be abolished tomorrow, would those who now become alcoholics and

drunkards be responsible and normal citizens, or would their instability emerge in other ways? This again is a question to which an honest answer should be sought, and not merely by those who wish to see all liquor barred, or facilities for its sale curtailed.

EFFECTS OF POVERTY

Less surprisingly, there is a good deal of correlation between criminality and poverty. However, a note of warning must be sounded. The chapter on dishonesty points out that there may be a good deal of "commercial" crime in New Zealand. How much we do not know, just as we do not know the incidence of illegal abortion. The great majority of our people are middle class by overseas standards, and general attitudes and outlooks are likewise middle class. The anti-social acts which middleclass people may be tempted to commit—one may suggest tax evasion as an example—are often dismissed, and emotion and resentment fixed on what might be called "poorman's delinquency". To quote the author of *Hudibras* they:

*Compound for sins they are inclined to
By damning those they have no mind to.*

At a middleclass level much that is dishonest, at least to Christian eyes, is not criminal or is at most the breach of a revenue or welfare statute. Those who are caught are often regarded as unlucky. Indeed, the climate in this respect is not dissimilar to the attitude of other social groups towards grosser forms of theft.

The link between crime and poverty which emerges from the survey revives an old question of whether people are poor because they are criminal, or criminal because they are poor. In cruder terms, the second alternative would be difficult to support in New Zealand where true poverty is rare. In the popular mind much of the blame that was once placed on poverty as the cause of crime is now transferred to the affluent society. The reversal, however, may be more apparent than real. Standards are relative, and in today's society a person who is less well off than others, although prosperous by former standards, may be tempted to crime. This could be a relevant factor in a proportion of theft, car conversion, and so on.

FEMALE OFFENDING

As in many other countries, the incidence of female offending in New Zealand is low. That women should commit fewer crimes than men is not surprising. In the case of assault and other crimes of violence the disproportion can be simply explained.

For most other crimes, the answer given in the past was that women lacked opportunities. However, in contemporary New Zealand society girls almost always work from the time they leave school or university

until marriage, and it is increasingly common for married women to return to work after the youngest child is well established at school—at first, perhaps, on a part-time basis but, after the children are grown up, often at full-time employment. Educational curricula are virtually the same for boys and girls, and the two sexes mix freely in almost all social activities.

Despite the invasion by women of what was once largely a man's world, a remarkable difference between the criminality of the two sexes remains. Commenting on a similar phenomenon in England, Lady Wootton has suggested that a thorough investigation might throw considerable light on the causes of crime.

Many of the younger women who find their way to penal institutions are guilty of nothing more than amoral behaviour, which itself is not a crime under New Zealand law. They are convicted of broadly defined offences, such as being idle and disorderly. It can be submitted that they have harmed no-one but themselves and (perhaps) those who choose to associate with them. One may concede that young girls need protection even against themselves and that there should be some method of dealing with those who fall into promiscuous ways. We may well ask ourselves, however, whether it is either necessary or proper to seek such an objective by convicting them of offences. The question becomes more urgent if, as the study suggests, only a small proportion of the girls involved come before the Courts.

Such true female offending as exists tends to concentrate in a few sectors—for example, shoplifting and simple theft.

The very rarity of female offending paradoxically makes penal treatment more difficult. There is no possibility of classified institutions; as a result, all types of female offenders must be kept together—the few really hardened and serious criminals with petty and occasional offenders. Even a segregation by age cannot be wholly achieved as long as Auckland and Dunedin prisons continue to be women's remand prisons.

ABORTION

Criminal abortion, of its nature, demands the participation of a woman, although some who carry on this ugly trade are men. It is, however, an offence with many special characteristics and demands separate analysis.

Firm knowledge about criminal abortion is extremely elusive and its extent in New Zealand is almost entirely speculative. The most we can say with real confidence is that the figures of convictions, and even of cases known to the police, are merely a small fraction of the offences that are committed. There is no evidence that women who undergo abortions are more prone than other women to break the law in other ways. Nor does abortion seem to be associated primarily with extra-marital pregnancy; most abortions appear to involve married women.

The arguments for or against a more permissive approach to abortion are developed in other publications that are freely available and this book omits any consideration of them. The subject is one of strong controversy and raises deep moral issues.

Agreement does not exist even on the true nature of the crime. E. M. Schur, for instance, treats it as an example of "crimes without victims"¹—acts that society punishes although no one is directly harmed thereby. Such a classification begs a large question. The majority of those who oppose the legalising of abortion condemn it precisely because, in their contention, it involves the death of an innocent human being, namely the unborn child.

SEXUAL OFFENCES

Sexual offences probably cause greater public alarm and concern in New Zealand than any other crimes, with the possible exception of murder. The sense of outrage and, above all, of fear is peculiarly strong. The reaction to any apparent increase in serious sexual crime is correspondingly extreme.

Notwithstanding a common impression, the incidence of sexual offending has not increased spectacularly in New Zealand, either in the long term or over recent years. A relatively small number of cases of rape means that the figures are likely to fluctuate considerably from year to year and, as with murder, there seems to be a rising and falling rhythm of convictions for which it is difficult to find a simple explanation. Occasionally there is an outbreak of sexual crime of a particular type. Thus the year 1961 saw an extraordinary rise in cases of gang rape, and the number of convictions for rape in that year far exceeded those for any similar period.

Little is known of the causes of the outbreak. One may speculate that example and imitation had much to do with it, but in the present state of our knowledge nothing more than a guess can be offered. The epidemic subsided fairly quickly and relatively few crimes of this type have subsequently occurred.

One most significant feature of the gang rapes was the proportion of Maoris and Islanders among the offenders. Of the 45 participants in gang rapes convicted in 1961, 28 were Maoris and six were Islanders. Maoris and Islanders formed two-thirds of all offenders convicted of rape in that year. Such figures emphasise the problems associated with Maori crime, as discussed in succeeding chapters.

Occurrences such as gang rape evoke strong, even violent, agitation among large sections of the community; there is frequently an urgent demand for drastic punishment. Probably the favourite proposal emerging from an emotionally charged atmosphere is for the revival of corporal punishment, which was abolished for all offences in 1941.

¹*Crimes without Victims*. Prentice-Hall (1965).

Previously, the punishments of flogging and whipping were—contrary to English practice—available primarily for sexual offences. It is an interesting comment that the Cadogan Committee in England regarded corporal punishment as “peculiarly inappropriate for sexual offences”.

The overseas and New Zealand evidence offers little support for a proposition that corporal punishment, as a judicial penalty, has any special deterrent value. The approach of those in authority in New Zealand has resembled that of the former British Home Secretary who answered a Parliamentary question urging the reintroduction of flogging by saying that when confronted with a problem he did not believe in hitting out blindly. Had the public outcry over gang rape led Parliament to reinstate corporal punishment for this crime after 1961, there is no doubt that the supporters of corporal punishment would have pointed triumphantly to the subsequent rapid decrease in the incidence of gang rape as proof of the extraordinary efficacy of even the threat of flogging. It would be hard to find a better illustration of the fallacy of the *post hoc ergo propter hoc* school which has so often bedevilled attempts at a rational approach to problems of punishment.

PETTY OFFENDING

The chapter on petty offending reveals the wide and sweeping nature of certain offences and the difficulty of reconciling some of them with what are widely regarded as fundamental principles governing our criminal law. Such offences as being idle and disorderly or a rogue and vagabond cover a miscellany of conduct and go some distance towards punishing status and associations rather than specific acts. For example, an idle and disorderly person includes a person who is the occupier of any house frequented by reputed thieves or persons who have no visible means of support, and a person who habitually consorts with such persons. Strangely enough, although it is an offence to consort with a “reputed” prostitute, it is not necessarily an offence to be a prostitute, reputed or otherwise.

As we have seen, the provision which deems persons with insufficient lawful means of support to be idle and disorderly and hence criminal is used to convict and imprison young girls who may be promiscuous. It is also used as a means of doing something about the problem of deadbeats who frequent parks and reserves at night, not usually for any nefarious purpose but simply to sleep. To some extent the use of the law in this way is laudable. Few would deny the need for some procedure to help such people. But whether the criminal law is a proper instrument is another matter.

The idle and disorderly sections, however, constitute only one example of petty offences with a wide scope. The offences of disorderly conduct and offensive behaviour can be, and occasionally are, used in a manner which some would regard as being at least potentially dangerous to civil liberties.

Recent convictions following various acts of protest by dissenters deserve reflection. It may not be going too far to say that as the law stands, and accepting the correctness of the Court's decisions,² "offensive behaviour" and "disorderly conduct" can mean anything that is distasteful to, or annoys, the majority. The protester poses a difficult problem for the police and for the law in a democracy, but if freedom of expression means anything, it means freedom to express publicly highly unpopular views, and to express them not merely in remote and scholarly journals but to ordinary people. The aphorism attributed to Voltaire comes to mind: "I disapprove of what you say but I will defend to the death your right to say it." To refer to views that all "right-thinking persons" detest is, of course, to beg the question.

The procedural study included in this volume, dealing with bail and remand, shows the need to pay much closer attention to actual practice than has been customary in the past in considering the adequacy of our laws. The limited studies on which the chapter is based suggest that some people may be held unnecessarily in custody while awaiting their trial. To say this is not to place blame on judicial officers who, it may safely be asserted, are as concerned with the need to protect the liberty of the subject as any group in the community. Nonetheless, insofar as it happens, it is a reproach to our sense of justice. It is economically unsound in that it puts people in prison to be kept at State expense, and it is dangerous in that association between remand prisoners and hardened criminals cannot always be avoided.

In particular, it would seem that the need to find sureties can have a discriminatory effect as between different classes and different races in the community. There may be a case for less frequently demanding sureties. Such a relaxation might have to be accompanied by a provision giving power to the Courts to impose other conditions of bail which may offer an equal, or greater, assurance that defendants will duly appear.

CONCLUSION

We cannot afford to be complacent about our system of criminal justice. The first and pressing need is simple—to learn more about it and the way it works. A brief survey, not referred to in the body of this volume, shows that in recent years about 38 percent of those tried in the Supreme Court were acquitted. This means either that many innocent men are wrongly charged or (much more probably) that too many guilty persons escape. But before considering causes and possible remedies we should seek more information. Why, for example, does the proportion of acquittals vary dramatically as between two of our metropolitan centres? What is the proportion of acquittals for various types of offences? The answers to these and other questions might well be illuminating.

²Notably *Derbyshire v. Police* [1967] N.Z.L.R. 391; *Melser and others v. Police* [1967] N.Z.L.R. 437.

Something should also be said about the limitations of the basic data on which criminology studies in New Zealand must rest. We cannot even be confident that our statistics are reliable. Figures prepared by different Government Departments—for instance, Justice and Police—cannot be completely reconciled.

It may be that part of the trouble goes back to the very sources of the figures and is the product of inaccurate reporting at grass-roots level. Many of the Justice statistics, for example, are ultimately based on returns from individual courts. Court staffs are overworked; they are primarily concerned with the day-to-day administration of justice; it would be understandable if the thankless task of compiling figures and sending them to Wellington were done less than perfectly.

There are other reservations. Police statistics record the amount of crime in the form of offences reported to the police. The record of the disposal of these cases shows, however, that a proportion are found, on investigation, not to be offences. They should, therefore, form no part of the index of criminality. Yet the "offences reported" are often used as if they did.

To a lesser degree, the same can be said of cases where prosecution results in acquittal. In many such cases an offence will, of course, have been committed, but it is making a large assumption to suggest that it is true of every case.

Acknowledging such limitations, it is certain that convictions for crime represent merely the top of the criminal iceberg. There is a great disparity between cases reported and cases brought to trial. What is of even greater importance in this context is that we do not know how much crime is not even reported, or the degree to which unreported crime differs according to the crime and the particular social group.

Some offences possess high visibility. Vandalism, serious assault, burglary and robbery are crimes that are generally known, whether or not the offender is detected. But there are many other offences, such as some of the consensual offences (for example, homosexual offences and sexual intercourse with a girl under 16), perjury, petty theft, and abortion, the prevalence of which we simply do not know.

It is an old cliché that crime is the product of temptation. The great majority of people are able to resist temptations to break the law either with or without difficulty. However, in many situations the very ease with which it is possible to commit a crime can precipitate offending by those who, through environmental or personal circumstances, are predisposed at a particular time.

To a considerable extent the business community, by its own deliberate practices, makes it easier to commit such crimes as passing bad cheques and shoplifting. Nevertheless wherever an offender is detected there is now little hesitation in insisting that he, or she, be prosecuted. There is a touching faith by those traders whose pockets have been hurt in the efficacy and desirability of traditional punishments as a deterrent.

A more subtle question is how far the community, through fashions, advertisements in periodicals and the like, can be charged with responsibility for a good deal of sexual crime. This speculation is not discussed in this survey, but it is nonetheless a question well worth asking. There have been studies overseas, notably in the United States, of the effect of reading on sex crimes and crimes of violence. The evidence whether the reading of obscene, or allegedly obscene, books can conduce to the commission of specific crimes is inconclusive. In any event, the surveys can tell us little about the causative effects of low standards of books in general on sexual behaviour.

The ultimate purpose of the elaborate structure of our criminal law and penal system is neither to punish nor to deter, nor even to reform, but to prevent crime. Every crime that is committed represents a failure of our law and institutions. But we cannot hope to find an explanation for crime, still less to prevent it, unless we delve below the surface to examine the deep springs of criminal behaviour. Ultimately, the problem of crime is social and psychological; the object of this necessarily tentative survey, with its emphasis on case histories, is to provide at least a rough map of some of the underlying strata. It should be regarded as a social or psychological study; it is certainly not primarily a legal study.

The first need, it bears repeating, is to bring to light such facts as are known and to encourage the discovery of others. Our study attempts to present the factual material in an arranged form but, to vary the metaphor slightly, the ore we have brought to the surface needs refining by a much deeper analysis than we have been able to attempt.

Chapter 2

HOMICIDE

On any swift assessment, murder may appear to be the least complicated area of study in the criminal field. Police investigation and the subsequent trial may be protracted and involved, but once guilt is established and the verdict passed, details are soon forgotten and the case is recalled in only simple terms. The murderer himself sinks into obscurity behind the prison wall and is seldom heard of again. Yet murder remains the most serious offence against society, and each murder gains dramatic presentation and wide publicity.

A closer study of murder presents a more complicated picture. The histories and the personalities of murderers, the circumstances leading up to the offence, and the manifold factors in the crime present a complex of human behaviour which defies simple presentation. The legal background to murder is itself a wide and fruitful study, and the application of the law to specific cases is the source of prolonged comment. In addition, the disposal and treatment of the murderer has for decades been a source of controversy. Murder, therefore, is no simple matter—even the compilation of accurate statistics presents its peculiar problems.

CULPABLE HOMICIDE

Figures for murder convictions and for culpable homicide are by no means commensurate. Statistical tables keep an accurate record of convictions for murder. But the figures do not necessarily give a true picture of culpable homicide.¹ For example, in 1959 the Justice Statistics of New Zealand² record that three persons were convicted of murder. For the same year the Report on the New Zealand Police gives this summary of the number of persons suspected of murder, and what happened to them:

Three were found guilty of murder.
Three were found guilty of manslaughter.
Two were found insane.
Three committed suicide.
Two were acquitted.³

¹See Appendix.

²*Report on the Justice Statistics of N.Z. 1959*, p. 18.

³*Report on the New Zealand Police 1960*, p. 42.

Even if homicides by insane people are omitted, the police table gives a very different picture from that revealed by murder convictions alone. The difference is still greater if we include all convictions for attempted murder, manslaughter, dangerous driving causing death, infanticide, and other offences resulting in, or intending, death. Several cases of culpable homicide may also go undetected each year.

Convictions for murder are thus but the iceberg peak of culpable homicide, and as long as a "dark" area about which we know little exists, the common practice of detecting changes in murder rates is logically invalid.

Arguments for or against capital punishment based on convictions for murder rely on equally invalid premises.⁴ All that can safely be adduced was said by the Minister of Justice, the Hon. J. R. Hanan, in the 1961 debate on the Crimes Bill—that although the penalty for murder changed three times, in 1935, in 1950, and in 1957, the figures for murder were not affected.⁵ Lord Gardiner has gone further: "But the remarkable fact is that the total number of committals for all offences from which capital punishment was removed in the last century, for which figures are available, decreased some 10 percent in the three years after removal of the penalty from each offence respectively, compared with the last three years in which the penalty existed. The detailed figures have all been published."⁶

A study of types of deviance and the effectiveness of legal sanctions has this to say. "There has been a very clear tendency throughout the Western World to eliminate capital punishment. In the United States this trend away from capital punishment has taken several forms. To begin with, there has been a rapid decline in the number of states where capital punishment is mandatory if an accused is found guilty; in 1924 the death penalty was mandatory in eight states, but by 1964 it was not mandatory in any. There has also been a tendency to impose the death sentence less and less frequently. Eighty percent of those persons sentenced to death in 1933–1934 were ultimately executed; the figure was 81 percent in 1940–45. But from 1960 to 1964 only 34 percent of the persons sentenced to death have been executed.

There has also been a steady increase in the number of states that have abolished capital punishment for various crimes. In 1920 only six states had abolished capital punishment; by 1957 the number of such states had risen to eight; and by 1965, 13 states had formally abolished capital punishment. Perhaps even more significant is the rapid decline in the number of persons actually executed. In 1951 there were

⁴For a discussion on this subject, cf. *The Sutherland Papers*, Indiana University Press, p. 175 seq. See also Havard, J. *The Detection of Secret Homicide*, Macmillan, 1960.

⁵During seven years of capital punishment (1951 to 1957) 22 murderers were convicted. Eight of the murderers were hanged. In the nine years following the suspension of capital punishment the figure was 24.

⁶*Capital Punishment as a Deterrent*, Lord Gardiner, p. 30, Gollancz, 1956.

105 executions in the United States. The number of executions has steadily and precipitously declined since that time, with 15 executions in 1964, seven in 1965, and only one in 1966.

Thus we see in the United States a steady and rapid alteration in the propensity to administer capital punishment. From the standpoint of deterrence, the significance of this trend is that during this same period we find *no significant change* in the murder rate (see table 1). It would seem that if the presence of capital punishment either in principle or in fact, were a deterrent to murder, then the murder rate should have gone up as both the potential and the actual use of capital punishment declined.

Table 1—COMPARISON OF PRISONERS EXECUTED UNDER CIVIL AUTHORITY AND MURDER RATE, 1951-1966

Year	No. of Persons Executed	Murder Rate (per 100,000 Population)
1951	105	4.8
1952	83	5.0
1953	62	4.8
1954	81	4.8
1955	76	4.8
1956	65	4.9
1957	65	4.9
1958	49	4.7
1959	49	4.8
1960	56	5.1
1961	42	4.7
1962	47	4.5
1963	21	4.5
1964	15	4.8
1965	7	5.1
1966	1	5.6

A similar conclusion emerges when the murder rates of states that have retained the death penalty are compared with the murder rates of states that have abolished it. This general conclusion also holds true when one compares contiguous states—states that presumably are relatively homogeneous culturally, but where one state has retained the death penalty and the other has not.”⁷

With regard to United Kingdom figures, an article commenting on criminal statistics for 1966, said: “In the statistics covering the first year

⁷Wisconsin Law Review, 1967, No. 3, p. 703.

since the suspension of the death penalty, the murder figures naturally attract particular attention. The murders recorded during the year numbered 143 which was 10 less than in 1965 and 12 fewer than in 1964. Such a variation is within the normal range of variations in the crime over the years, and appears only to confirm the experience of this and other countries, that the presence or absence of capital punishment makes little difference to the number of murders committed."⁸

STATISTICS FOR MURDER

Convictions for murder in New Zealand are statistically rare. (Refer diagram, p. 80.) Compared with other groups of "unnecessary" deaths—500 road fatalities and over 200 suicides—the annual conviction rate is insignificant.

Dr John M. MacDonald, in his book *The Murderer and His Victim*, gives homicide rates for 13 countries, including New Zealand. He says: "The homicide rate in the United States is significantly greater than in many other countries. In 1958 there were 8,182 cases of murder and non-negligent manslaughter—more than 22 cases daily, and 4.7 cases per 100,000 population. This is approximately eight times the rate in Switzerland, and almost twice the rate in England, Canada, Australia, and New Zealand."⁹

The criminal homicide¹⁰ rates per 100,000 population in various capital cities in 1959 were as follows:¹¹

Pretoria, South Africa	..	13.9
Washington D.C.	..	6.1
Sydney, Australia	..	3.4
Montreal, Canada	..	2.5
Amsterdam, Holland	..	2.0
Vienna, Austria ..	..	1.7
Madrid, Spain ..	..	1.5
London, England..	..	1.3
West Berlin, Germany	..	0.4
Oslo, Norway ..	..	0.2

There were no criminal homicides in Berne, Switzerland, in 1959.

From 1920 to 1966, 105 persons were found guilty of murder in New Zealand—an average of 2.2 per annum. A somewhat smaller number of

⁸Dawtry, Frank: *Criminal Statistics, 1966*. Justice of the Peace and Local Government Review, 2 September 1967, pp. 543-544.

⁹MacDonald, J. M., *The Murderer and His Victim*, pp. 6 and 7, Charles C. Thomas, 1961.

¹⁰Culpable homicide is defined in s. 160, Crimes Act 1961. S. 160 (4) states: Homicide that is not culpable is not an offence.

¹¹There were no murders in Wellington in 1959.

suspects committed suicide.¹² Eighty-one persons were found not guilty on the grounds of insanity.¹³

Statistics from the United Kingdom show a similar picture. This is particularly true in the proportion of sane to insane killers. Taking the four categories—stay of proceedings, unfit to plead, not guilty on the ground of insanity, and certified insane after trial—the rate of such cases to the total number of persons charged over a 50-year period (1900–1949) in England and Wales was 40.2 percent. In New Zealand for the period 1920–1964, the figure was 45.4 percent. There is thus a difference of only 5.2 percent in the rate of “insane” to “sane” killers in these countries, over roughly comparable periods of time.

AGE

As in Britain, most New Zealand murderers are between 21 and 30 years, but the New Zealand average age at the time of the murder is 31.6 years (refer Appendix). The majority of the insane group show a broader spread—between 21 and 40 years.

WOMEN

Only nine of the 105¹⁴ New Zealand murderers from 1920 to 1966 were women. Strangely, their convictions took place from 1948 onwards. There were no female murderers in New Zealand prisons from 1960 until 1965 when a woman was convicted of murder by poisoning. Another was convicted in 1966.

MANSLAUGHTER

From 1947 to 1966, when there were 59 convictions for murder, there were 110 convictions for manslaughter. Fifty of the latter offenders

¹²Table of reported murders committed in New Zealand where the suspect committed suicide. 1960–1964 inclusive.

Year	Persons Killed by Offenders Who Committed Suicide No. of Reported Murders	No. of Suspects Who Committed Suicide
1960	3	3
1961	8	5
1962	2	2
1963	6	3
1964	6	3
	19	13

¹³Murders reported to the Police have risen fitfully over the past 60 years with a peak in the depression years. But the number of reports has not grown in proportion to the population. The number of reports by decades are: 66, 69, 83, 107, 115, 107. The reports of attempted murder remain much the same over the same period: 53, 39, 45, 34, 41, 47.

The term “reported murder” in Police statistics is roughly synonymous with death by violence.

¹⁴In addition, three Niue Islanders were convicted in 1953, and a Cook Islander in 1956.

were initially charged with murder. About a dozen were women who would today be charged with infanticide. As with attempted murder, there has been no significant increase in reported manslaughter, except for a peak after World War I.¹⁵

LENGTH OF LIFE SENTENCE

The release of prisoners serving life imprisonment is determined by the Minister of Justice on the recommendation of the Parole Board. From 1930 to 1961 the average length of a life sentence was about 12 years and the shortest were terms of five years by two young female murderers who had been sentenced to be detained at Her Majesty's pleasure. In the period 1930-1961 three murderers died in prison (or while on parole because of imminent death), and six were transferred to mental hospital.

Before the 1961 Crimes Act, the Parole Board began to interview each "lifer" after he had completed five years in prison. He could be released at any time thereafter. But since capital punishment was abolished in 1961 the Parole Board (apart from exceptional cases) begins its annual interviews of the murderer 10 years after conviction. The Criminal Justice Amendment Act, 1962, s. 26, amended s. 33A of the principal Act, and substituted the following paragraph:

"Functions of Prison Parole Board: In the case of every offender undergoing imprisonment for life consequent upon his conviction for murder, as soon as may be practicable after the expiry of 10 years from the date of his reception in the prison, and at least once in every period of 12 months thereafter."

The average life sentence is, therefore, probably longer since 1961.

The Minister of Justice emphasised at the time that a sentence of life imprisonment meant what it said, namely, imprisonment for life.

However, the law provided that any person serving a sentence of life imprisonment could be released on probation by the Minister of Justice on the recommendation of the Parole Board. In making its recommendation the Board was required by statute to have regard first to the safety of the public and of any person who might be affected by the prisoner's release and also to the condition of the offender and his reformation.

The Minister said that legally the decision to release on probation a person convicted of murder was his responsibility but that it was the practice to take every case to Cabinet. Cabinet in dealing with these cases must, of course, consider carefully the safety of the public.

While the function of the Parole Board is only to recommend, it was undesirable that there should be any serious divergence between its recommendations and the decisions made by the Government on them. For that reason consultations had taken place between the Minister and the Chairman of the Parole Board, Mr Justice McGregor.

¹⁵For figures and sentences 1960-1964, see Appendix.

The Minister said that, having regard to the views of Cabinet, he was now informing the Parole Board that in considering their recommendations Government would be guided by the following general considerations.

In a bad case, a murderer who, prior to the abolition of capital punishment, would probably have been hanged, should serve his sentence for substantially longer than 14 years, and in some cases might never be considered fit for release; in the average case he should serve about 12 to 14 years imprisonment: and in those cases where there were mitigating circumstances the period could be less.

In giving this outline of policy, Mr Hanan emphasised, however, that each case would have to be carefully considered on its merits.

PAROLE DURATION

Murderers released from prison are on parole for the duration of their lives. But they may apply to the Parole Board from time to time for discharge from parole. Applications are considered only if there has been no breach of probation and if the parolee's behaviour has been good.

A study of cases shows a wide range of periods on parole. Twenty-two murderers were released from 1939 to 1947. Three left New Zealand, one was discharged after two years, another after four years, and three were on parole for five years. The remainder served periods ranging from eight to 20 years. One female and one male were committed to mental hospital. Only one murderer was recalled to prison for six months because of his difficulty in finding suitable accommodation and because his general conduct left much to be desired.

One man offended 11 years after discharge from probation. He was convicted of being illegally in an enclosed area without intent, and two months later he attempted to commit suicide.

Another man, convicted of murder in the Second World War, had his sentence mitigated and he repeatedly reoffended. The murder was committed in 1943 when the offender entered the home of an Italian living in Maadi "for the purpose of forcing connection with a young female servant employed there, and incidentally of acquiring any valuables that were to be had in the process. He was disturbed and attempted to escape but before he could succeed in doing so the householder stopped him." In the ensuing struggle the latter received fatal injuries.

The death sentence was commuted to life imprisonment which in turn was mitigated to 12 years' penal servitude in 1946 by the Superior Military Authority. On 1 October 1947 his sentence was further reduced to 10 years' penal servitude. Finally, in April 1948 the sentence was mitigated to 7 years' hard labour. He was released on 3 September 1948 and six months later was convicted of common assault on a girl aged 16 years.

A conviction for aggravated assault followed six months later followed by two charges of being illegally on premises, rogue and vagabond, theft, wilful damage, assault, and obscene language. Finally in 1957 he was sentenced to preventive detention on two convictions for burglary.

REPRIEVED MURDERERS

Between 1950 and 1960 15 murderers were reprieved, including one woman. Two female minors and two male minors were convicted of murder but sentenced to be detained at Her Majesty's pleasure. Three of the male murderers committed the offence in their native Niue Island and another in the Cook Islands.

Other convicted murderers were reprieved on the grounds of youth or for some other extenuating circumstance.

THE LAW OF MURDER

The common law doctrine that murder is killing with malice aforethought was elaborated and replaced by the first New Zealand Criminal Code of 1893. The law as stated then was substantially reproduced by the Crimes Acts of 1908 and 1961.

The statute first provides that homicide may be either culpable or not culpable. Culpable homicide, except for the special case of infanticide, is either murder or manslaughter. Murder is defined in section 167 of the Crimes Act 1961:

- "167. Culpable homicide is murder in each of the following cases:
- (a) If the offender means to cause the death of the person killed:
 - (b) If the offender means to cause the person killed any bodily injury that is known to the offender to be likely to cause death, and is reckless whether death ensues or not:
 - (c) If the offender means to cause death, or being so reckless as aforesaid, means to cause such bodily injury as aforesaid to one person, and by accident or mistake kills another person, though he does not mean to hurt the person killed:
 - (d) If the offender for any unlawful object does an act that he knows to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting anyone."

The section, along with section 168, very carefully states the precise intentions which will be treated on the same basis as an intent to kill. The New Zealand Legislature attempted to avoid problems which arose out of the common law doctrine of "constructive malice". The Report of the Criminal Code Commissioners (the English Report on which the New Zealand legislation was based) said that it was intended to free the law "from the element of fiction introduced into the expression 'malice aforethought' although the principle that murder may under certain circumstances be committed in the absence of an actual intention to cause death ought to be maintained."

In England in 1961 a man named Smith, who had just committed a robbery, was attempting to escape when a policeman jumped on the running board of his car. In an attempt to shake the policeman off, Smith zig-zagged from side to side across the road. The policeman fell off on to the road and was fatally injured. The House of Lords held that as Smith had done an unlawful and voluntary act aimed at the policeman, of such a kind that grievous bodily harm was the natural and probable result, he was guilty of capital murder, regardless of what he may, or may not, have intended or foreseen.

The New Zealand Crimes Act 1961 omitted the words "*or ought to have known* was likely to cause death" from paragraph (d) of section 167 in order to avoid the principle enunciated in Smith's case. Whether Smith could be found guilty of murder in New Zealand would depend upon whether the jury thought Smith intended to cause an injury likely to cause death to the policeman within paragraph (b) or not, or whether they thought that the way he was driving the car was likely to cause death and that Smith knew it within paragraph (d). New Zealand in 1961 would have nothing of the doctrine of ascribing a recklessness about death to the accused man which he did not possess.

In this country, before any question of possible defences can arise, the prosecution must show both that the accused did the act and also that he had the intention required to constitute the crime. Automatism would thus negate any charge of crime, because the essence of automatism is that a person does not know what he is doing.

The principal positive defences to a charge of murder are: (a) insanity; and (b) provocation. Provocation is not a ground of acquittal but only a partial defence. If established, it reduces the charge from murder to one of manslaughter or infanticide. Where two persons enter into a suicide pact and one of them kills himself and the other survives, the Crimes Act 1961 provides that he shall be found guilty of a special crime and liable to a maximum of five years imprisonment. He shall not be guilty of murder, as under the old law.

The defence of insanity substantially follows the definition laid down in the McNaghten Rules,¹⁶ though in section 23 of the Crimes Act 1961 their expression is slightly altered. In paragraph (b) of subsection (2), where the section speaks of the accused being incapable "of knowing that the act or omission was morally wrong, having regard to the commonly accepted standards of right and wrong", the wording follows the Australian interpretation of the meaning of the word "wrong" in the original rules and not the English one, where "wrong" has been

¹⁶The so-called McNaghten Rules are given in s. 23 (2), Crimes Act 1961.

"No person shall be convicted of an offence by reason of an act done or omitted by him when labouring under natural imbecility or disease of the mind to such an extent as to render him incapable—

(a) Of understanding the nature and quality of the act or omission; or
(b) Of knowing that the act or omission was morally wrong, having regard to the commonly accepted standards of right and wrong."

held to mean "legally wrong" or "forbidden by law". Despite the abolition of capital punishment in New Zealand, the defence of insanity is still raised quite frequently in murder trials.

A person who has been acquitted on account of his insanity is detained in an institution (usually a mental hospital, but it may be a penal institution) until he is considered fit to be released into the community. The decision to release is the responsibility of the Governor-General in Council if the crime charged was murder or any other offence punishable either by death or by imprisonment for life, and of the Minister of Justice in other cases. The decision cannot be taken unless two doctors appointed by the Minister of Justice certify that the person is fit to leave the institution. Normally release is conditional in the first place, though a final discharge is theoretically possible immediately.

PROVOCATION

Culpable homicide that would otherwise be murder may be reduced to manslaughter if the person who caused the death did so under provocation. Provocation is defined in section 169 (2) of the 1961 Act:

"(2) Anything done or said may be provocation if—

- (a) In the circumstances of the case it was sufficient to deprive a person having the power of self-control of an ordinary person, but otherwise having the characteristics of the offender, of the power of self-control; and
- (b) It did in fact deprive the offender of the power of self-control and thereby induced him to commit the act of homicide."

In the previous law the section spoke of the crime being committed "in the heat of passion" and caused by "sudden" provocation. It also made no reference to the ordinary person "otherwise having the characteristics of the offender".

The omission of the words "in the heat of passion" and the word "sudden" was intended to enable the jury to find provocation where a man's resentment at the provoking acts smouldered for a considerable time, until finally it became too intense for him to control; he then lost control and committed the fatal act. It was intended that the man with a slow temper should not be at a disadvantage as compared with the man whose temper caused him to flare-up quickly and to recover his self-possession sooner.

This is borne out by the comments of the Minister of Justice in moving the second reading of the Crimes Bill 1961:

"There is one other change in the law relating to provocation which deserves mention. For provocation to be successfully pleaded today in order to reduce murder to manslaughter, one must establish that the act of provocation was immediately prior to the commission of the offence. This disregards psychological reality for it may well happen that instead of blazing up at once, a man may brood perhaps for hours over a provocation until his control snaps. It all depends

on the type of person. In the Bill there is no such artificial restriction, and if there has been in fact provocation and loss of control, it is open to the jury, if it thinks fit, to return a verdict of manslaughter."

The other alteration allowing to the ordinary person, whose powers of self-control are to be the test, the characteristics of the offender, was intended to deal with the situation that arose in the English case of *The Director of Public Prosecutions v. Bedder* [1954], 1 W.L.R. 1119. There a prostitute taunted Bedder with his impotence, and the House of Lords held that in considering whether what was said amounted to provocation, the jury were not entitled to take Bedder's impotence into account, because it was the reaction of the ordinary man that they must look at and an ordinary man does not possess that characteristic.

The section relating to provocation has been considered on several occasions since 1961 by the Court of Appeal. In *R. v. McGregor* [1962], N.Z.L.R. 1069, the facts were that McGregor had for some months had differences with his neighbour Whiteford. The antagonism between the two did not extend to McGregor's father, who maintained friendly relations with Whiteford. In fact, on the date of the fatality the two had a glass of beer together. Upon McGregor's hearing of this during the evening, he became upset, and a short time later left the house with a rifle and shot Whiteford, who happened to be in his garden. The defence of provocation was raised.

Mr Justice North, in delivering the judgment of the Court of Appeal, said: "The omission from the new section of references to 'heat of passion', 'sudden provocation', and 'before there has been time for his passion to cool', do not abrogate the rule always emphasised in the common law that a defence of provocation can only avail when the homicide has been committed 'in hot blood' and while the accused is still 'in the throes of passion'".

The Court held that the Judge at the trial was fully entitled to tell the jury that it was of the essence of provocation that it should cause a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him for the moment not master of his mind.

However, in subsequent cases the Court has tended to emphasise more strongly that provocation is a matter of fact to be left to the jury. Thus in *R. v. Dougherty* (unreported) the evidence was that the accused and his wife returned home from a party at 4.20 a.m. There was evidence of a violent assault on the accused by his wife, after which he and a friend sat in the kitchen for some time over a bottle of beer. He then took a rifle and shot his wife. There was no reliable evidence as to the length of the interval that elapsed but the important point for this purpose was that the Court of Appeal, in effect, ignored the question of lapse of time. What it did emphasise in allowing the appeal and ordering a new trial is summarised in the following extract from the judgment of North, J.:

"The learned Judge having ruled that there was evidence of provocation, it became a question of fact for the jury whether the provocation was sufficient to deprive the appellant of the power of self-control, and did in fact so deprive him and induced him to commit the act of homicide (section 169 (4) of the Crimes Act 1961). The error into which the learned Judge fell was that he ruled as a matter of law that there must be a proper and reasonable relationship between the mode of resentment and the provocation given whereas, provocation being a matter of fact, he should have told the jury that this relationship was merely a factor, though indeed a weighty factor, to be considered by them in determining whether there was provocation."

This would suggest that the attempt made by those who framed the new Crimes Act to obtain equal treatment for the man whose resentment builds up slowly and takes time before it reaches its maximum intensity has not altogether failed, and that the slow-tempered, brooding type may be entitled to take advantage of the defence of provocation.

The Court of Appeal in *R. v. McGregor* was also critical of the Legislature's attempt to soften the harshness of *Bedder's* case. However it has been suggested that the Court's approach to this aspect of the problem may not ultimately find favour.¹⁷

THE ROLE OF THE POLICE

When a dead body is found, unless it is apparent from the outset that death has been natural and there are no suspicious circumstances connected with it, the possibility of homicide is assumed by the police and appropriate action taken. The role of the police in homicide is both urgent and exacting. It has been said that what is done in the first 24 hours is of the utmost importance, and what is missed may be crucial to the case. The procedure includes a minute investigation of the environment of the crime, calling in detection experts and the pathologist, quickly taking photographs, and many other detailed tasks.

As an example of the importance of early activity—the inspection of the site of the crime and the examination of the body where it lies—a pathologist describes the case of the murder of an old caretaker in the concourse of the Wellington railway station:

"There was the body lying, and from it, just like a halo spreading out, were patches of blood stains radiating from the head and extending a distance of 5 or 6 ft. There were deductions that could be made from that as to how this blood was made to spurt in all directions. It indicated the use of some very heavy object as the weapon, and it also indicated that it would be almost impossible for the assailant to have escaped this wide splashing of blood which seemed to go in all directions around the head.

¹⁷Campbell, I. D., in *New Zealand, the Development of its Laws and Constitution* (2 ed. 1967), p. 375. And see Adams, *Criminal Law and Practice in New Zealand* (1964), p. 269.

"Within a short time there appeared on the scene, or was brought to the scene, a man rather dishevelled and with a good deal of blood on his clothing—a great deal of blood about the front of his coat, and on the skirt of his overcoat smears of blood. Certainly he was a most blood-stained object, but the blood was in the wrong place. There was no blood on his shoes, there was no blood on the trousers below the knees. Later on, as a further suspect, there was found a man who had spatters of blood not only on his face, almost like freckles, but also on his boots and on the legs of his trousers, and in addition two or three little patches of material that looked like blood or blood clots but which, on microscopical examination, proved to be portions of human scalp.

"The appearance of the body; the quick examination of the body and the assessment, as far as it could be made, of the probable nature of the weapon that caused the wounds; the certain indications as to what the clothing of the assailant would be like; the examination of the pieces of scalp on the trousers of the assailant before they had time to dry—all formed a complete, continuous picture.

"This sequence of events could only be possible if the pathologist had been at the scene, had been able to form a picture and had been able to see at once and take exhibits, and examine them forthwith. If the trousers had been examined on the next day the blood stains would have dried and they might not have been readily identifiable. I doubt very much whether even the most imaginative sort of pathologist would imagine that the dried specks which he saw were not just other drops of dried blood, and would have gone to the trouble of softening them up again by soaking them in water and revealing what their true nature was. I thought that case was a very good example of the enormous importance in some cases of the pathologist being on the spot to see the situation for himself and to make his observations at that early stage."

The police some years ago established a special homicide course where officers are given precise instructions and duties. Members of the Uniform Branch, on arriving at the scene, note their time of arrival, the weather conditions, and any other relevant matters. They are to establish death without moving the body—and, when the doctor arrives, they ensure that if at all possible he does not move the body. They ask only, "What happened?" and "Why?" If the suspect is present no attempt is made to interview him, but all that he does and says is noted.

The Immediate Scene Detectives, armed with a "murder kit", go at once to the scene and clear everyone else away. They establish the fact of death and the identity of the victim as soon as possible. Should the victim still be alive, they call an ambulance and one of them accompanies the victim to the hospital, for there is the possibility that a dying declaration may be made. The victim, if able to speak or write, is encouraged to say what happened.

The scene of the crime is guarded. All drains, taps, and lavatories are sealed and all exhibits preserved. Witnesses are detained or names and addresses taken. The suspect is separated but not arrested unless this action is absolutely necessary. The interview of the suspect is carried out by the officer-in-charge of the investigation, or the person appointed by him.

The experts have been notified and asked to report—photographer and fingerprints officer, pathologist, analyst, draughtsman and, if necessary, a ballistics expert. The Crown Solicitor may also be invited to comment.

An effort is made to reconstruct the occurrence and to establish motive. An investigation of every possible agency or person who may help in the case begins; a local canvass is made. Laundry, transport, hotels, informants, associates of the victim, medical history, and relatives are all included in the investigation.

When the suspect has been arrested he is examined by the pathologist and is photographed, fingerprinted, palm-printed, and if necessary foot-printed. The Commissioner is notified and a report prepared for the psychiatrist. A file is prepared for the Court and an early conference held with the Crown Prosecutor.

Much of the police work in cases of homicide is painstaking and monotonous drudgery and involves much acquired skill. One particular murder provides an illustration of police activity in a difficult case.

The victim's home was in a well subdivided area where the blocks were laid out in squares of attractive houses, each with a hedge across the front. From the road it was difficult to look into the house, which stood back from the hedge.

The dead woman's husband, who worked at a brewery some miles away, came home one night and found his house locked. He broke in and later reported to the police that he had found his wife dead in the kitchen, lying on the floor in a pool of blood. She had been battered to death. On the kitchen stove were some dishes, apparently the breakfast dishes not yet washed up. All the indications were that she had been murdered very early in the morning. Her husband had caught his bus at 7 a.m. to go to work some miles away. He was there all day, had lunch there and did not leave work until late that afternoon. The pathologist stated that when the husband returned home at 5 p.m. his wife had been dead for many hours. The question was whether she had been alive after he left in the morning.

In the subsequent inquiries the police found a little boy who had been to early Mass at a Catholic church close by. He said that when he came home he stood in front of his house, which was just opposite the victim's house. He looked across the road over the hedge, and saw the figure of a woman move across the window of the house where the body had been found. Very grave doubt was thrown on this statement, because, unless the curtains were in a particular position, the boy could

not have seen into the room. No note had been taken of the position of those curtains. Had their position been noted, it would have been quite clear whether he could have seen in or not.

An obvious question was whether anyone had been seen in the area in the early morning; if the husband's story was true, he had eaten breakfast and left his wife alive at seven in the morning. To get to the house, it was necessary to traverse at least two, if not three, sides of the block. As there was little traffic on the side streets around the block, anybody moving about might have been seen.

The police squad made a house-to-house canvass in the block to interview everyone and to determine whether anyone had been seen walking round the block. All they found was one man who had seen a person, whom he took to be a woman, going down the street. She was dressed in slacks and moved with a peculiar walk. He was some distance away from her, and could not see her face.

Someone later heard that a woman living on the other side of the block to the house had said she had seen a woman walking down her street shortly after 7 a.m., looking "ghastly white", and dressed as the previous man had described. This information was picked up by a more or less casual over-hearing. The police had previously visited the house where this second witness lived, and had not seen her. It was she who was finally responsible for the conviction of the murderer. She had just come off duty at the hospital, and was walking home, when she passed the white-faced woman. Being a nurse, she was concerned that the woman might be ill—so much so that she took a good look at her as she passed. When this evidence came to light, the whole case was altered.

The question whether the small boy could have seen into the house, and seen the victim alive at the time he came home from Mass, after 8 o'clock, was no longer so very serious, though it was still important. The police had to get the evidence of the first man who had seen a woman with a peculiar limp. Since the suspect was a notorious racegoer, this witness was stationed outside the local race course to watch everyone going in, and he picked out a woman with a particular mode of walk. It was the suspect.

The identification still meant very little in itself, because it was possible that another woman could have the same walk. However, a direct identification was made by the nurse, who was taken to a busy city corner and was able to identify the same suspect as the woman whom she had seen on the morning of the murder.

But for this careful and exhaustive follow-up of every scrap of information, the murderer might have escaped detection.

PSYCHIATRIC EXAMINATION

The psychiatrist, like the pathologist, should see the suspect as soon as possible. There are several reasons for this procedure. In the first place, the Court is concerned with the state of mind of the accused at

the time the crime was allegedly committed. Very often, the accused may be very much more accessible to examination in the period immediately after being arrested and charged. His state of mind at that particular time is indeed a crucial fact which the Court may be concerned to elicit.

The psychiatrist's report is available, of course, both to the prosecution and to the defence. In some instances the defence may not welcome the substance of the psychiatrist's report and has the right, frequently exercised, of requesting an independent examination by a psychiatrist of its own nomination. The defence may even request a further Crown opinion.

Cases, however, have occurred in which there has been such delay in arranging for a psychiatric examination by the Crown, that a psychiatrist nominated by the defence could well have had the opportunity of the first examination of the accused. Tardiness in ensuring examination of the accused by the psychiatrist called by the Crown, has enabled the defence to suggest that the Crown psychiatrist could not give a reliable opinion as to the state of mind of the accused at the time of committing the crime on account of the period that had elapsed before the person was examined. It has also enabled the defence on occasions to elaborate, upon somewhat insecure and hypothetical foundations, a psychiatric defence which would have been virtually untenable had there been an earlier examination of the accused. It is a well attested fact that sometimes, for want of a better defence, an unwarranted plea of insanity or mental irresponsibility is raised on behalf of the accused.

It is essential that the examining psychiatrist should have certain knowledge of the factual background of the situation as it is known to the police. It is also a matter of very considerable importance that an outline of the behaviour of the accused at the time of his arrest and subsequent interrogation should be available at the time of the vital first examination. Thus the psychiatrist relies heavily on the police details relating to the criminal and the crime.

For example, pointless violence, such as repeated stabbing after death or unnecessary macabre mutilation, suggests the possibility of either extreme rage or hatred or an insane frenzy, while the apparently motiveless killing of a complete stranger if the person is indeed a total stranger, is presumptive evidence of mental disorder. On the other hand, killing in the course of armed or planned robbery may well be regarded initially as presumptive evidence of sanity, as may be killing in the course of a quarrel for which there is adequate motivation.

The apparent motivation of the crime is an important feature. Some motives are very direct leads as to presumptive sanity. The Crown does not have to prove motive.

The actions of the accused may well tell whether he knew what he was doing and that it was wrong, rather than his own statements and explanations. For example, evidence of an attempt to conceal the

crime is presumptive of a knowledge of wrongdoing. Attempts to evade arrest or to seek refuge in flight should likewise be taken into account. However, it must always be borne in mind that a person may kill during a passing phase of real and uncontrollable irresponsibility. For example, homicide may occur during, or following, an epileptic episode; when the offender returns to normal consciousness, panic and awareness of what he has done may well prompt attempts at concealment, flight, or evasion of arrest.

Special caution is required in the case of certain persons who give themselves in charge and confess to a crime of murder. Among such persons are found depressive or other psychotics and unstable exhibitionists.

Any admission or statement which the offender makes to the police or others at, or about, the time of arrest may also be valuable evidence of his awareness of the state of the crime, and that it was wrong.

Other relevant facts observed by the police, or related to the police, concerning the prisoner's behaviour and state of mind include his emotional state at the time of arrest and during initial interrogation; the extent of his apparent understanding of his predicament; what he says and does and the way he says and does it; his nature and behaviour under interrogation; evidence as to the recent consumption of alcohol at the time of the arrest.

POLICE INTERVIEWS

The recording of police interviews is of the utmost importance because there is very often a great deal of later dispute as to what was said, what it meant, and what it did not mean.

In 1943 two police officers interviewed a man suspected of murdering his bride. He was not prosecuted for the alleged murder until eight years afterwards. The two officers, immediately after the interview, transcribed and set out a tremendous amount of material. When the trial took place, eight years afterwards, there could be no argument about what had been said because it was written down and verified in writing by both officers. If they had relied solely on memory, their evidence would have been quite unreliable. One officer had left the police force in the interim, but when he saw his own statement and signature, he clearly recalled the details.

The role of the police in cases of homicide is highly specialised, painstaking, and meticulous. Not only does it bring to bear its own expertise, but it also calls upon the legal, medical, and psychiatric disciplines to help in bringing to justice those who are guilty of murder.

CLASSIFICATION

It is appropriate at this stage to present broad groupings of convicted murderers. By giving examples of each group we gain some impression of the pattern of murder in New Zealand over the past 25 years.

During the years 1940 to 1964, 71 people were convicted of murder. The number is so small as to make grouping difficult, but it is too large for the presentation of individual case histories. The categories given are, therefore, based for the sake of convenience on some outstanding characteristic—age, sex, race, motivation. These groups overlap in some cases.

"ABNORMAL" MURDER CASES

Case I

In 1940 on a country road, a car knocked over two pedestrians—a woman and a boy. The motorist took the dead body of the boy and the seriously injured woman into his car and carried them to a secluded place, where he threw the boy's body over a bank. He then raped the woman and killed her with a heavy tyre lever. At the trial, almost four months later, he was found guilty and sentenced to death.

He was examined by three psychiatrists who found no evidence of mental disease or feeble-mindedness. But his intellectual level was low and his scholastic attainment limited. The sentence of death was commuted and he spent over 20 years in prison. During that time he lived a quiet, withdrawn existence and, despite his long incarceration, there appeared to be little change in his personality.

Since his release his work and behaviour have been good.

Case II

A murder compounded of sin, guilt, sex, and probable schizophrenic or hysterical factors took place four years later. A. was a farmer and a very religious man. He was married and had two young children. His wife was pregnant for the third time.

Despite his piety, it appeared that he had a strong urge to have sexual intercourse with young women of the local church and district. This filled him with guilt. His economic position also caused him some concern, for, though he worked well, his farm was not prospering, and he had no help.

When he and his wife discovered that she was pregnant again, they tried unsuccessfully to persuade a doctor to terminate the pregnancy. It was against this background that A. shot his children and attempted to kill his wife.

He pleaded guilty to the murders, but at the trial he could not give any adequate motive. He was a model prisoner and was eventually released. He remarried and is now a useful member of the community.

After the murder, this man was examined by psychiatrists who could find no evidence of insanity. Several similar cases have since occurred in which families have been wiped out. In almost every case the killer has committed suicide or has been committed to a mental hospital.

Case III

In 1948 a man (B.) strangled his five-year-old son and buried the body, which was discovered 18 months later after an intensive police search. The man was arrested and eventually convicted of murder.

The boy's murder was the culmination of a worsening criminal career. B. had been in trouble since childhood and had appeared in the adult Courts at the age of 17 years. The charges began with assaults, mischief, and credit by fraud. At the age of 23 years he was imprisoned for six months for assault on a female, and later received a five-year term for rape.

He had married shortly before this, and the murder victim was born before his father was imprisoned. In 1948 he returned home from prison and immediately began to show extreme cruelty to his son. A police warning was unavailing. He moved out of the district and took the boy with him to live in a scrub-cutter's tent in remote country places. There was plenty of evidence of the boy's terror of his father, but B. resisted all attempts to let the child out of his care.

When the boy disappeared, his father insisted that friends had taken him and that he was safe and well. But few accepted the story, and the police eventually revealed and solved the crime.

Once again motive was obscure, unless one can accept that hatred of his wife led to B.'s cruelty to their son and finally to murder. B. died in prison.

Case IV

This murder was the final act in a series of sexual offences beginning in 1922. On the first occasion, the offender was given three years' probation for breaking, entering, and theft, and obscene writing on a women's lavatory. Four months later he was found guilty of five charges of assault with intent to commit rape, and sentenced to four years' reformatory detention. In 1936 he appeared before the Court on a similar charge and was sentenced to five years' reformatory detention. The same happened in 1940. In 1945 he was living in lodgings near Auckland and there murdered a woman whose naked body was later found in a wardrobe.

Like A.,¹⁸ he pleaded guilty. A psychologist, commenting on the first series of sexual charges, said that guilt feelings and inflamed sexual desire may both have had a share in determining the form of the offences. "It is even possible that a need to assert his heterosexuality was present, though his later history suggests that sadistic elements may have predominated."

Case V

This was a psychopathic killing which took place in 1948—the final act in a series of offences which began in childhood with truancy and

¹⁸Case II.

absconding. After a Children's Court appearance for false pretences C. was committed to the care of the Child Welfare Division, followed by a series of foster-homes and more absconding and offending. At the age of 15 he made a sexual assault on an employer's wife. He was sent to borstal in the same year.

Two years later he received another borstal sentence during which he escaped briefly. He was convicted of assault with intent to commit rape, his victim being a borstal officer's daughter. Two years later, a few weeks after his release from prison, he savagely killed and raped a woman in a city park.

The circumstances of the crime prompted the Chief Justice to comment: "Our English language scarcely has words powerful enough to express the heinous nature of your crime. I doubt whether 'diabolical' or 'fiendish' are adequate to describe the way you attacked, maimed, and outraged and murdered this unfortunate little woman, out for her Sunday morning walk."

The jury added a rider to its verdict: "In view of the evidence presented, the jury views with great concern the possibility of the accused's being released at a comparatively early age."

Case VI

The last murder case in this group concerns a young man who murdered a schoolboy aged eight years. This man had been drinking for several hours before he followed the child and enticed him into a house with the promise of a kitten. When no kitten was forthcoming, the boy became frightened and began to cry. He was struck and strangled manually.

The accused said he had no memory of what happened after hitting the boy and putting his hands round the boy's throat. He awoke on a mattress with the undressed body of the boy beside him. He then went to a billiard saloon where he recalled an appointment with a young woman. He kept his appointment and took her to the pictures; only half way through the show did he appear to realise what he had done. He decided to tell the police and did so later that evening.

In the post-mortem examination of the child, an adult's pubic hair was found in an ear. Examining psychiatrists concluded that the murder had a homosexual motive.

These and other murders were committed by people apparently abnormal at the time of the crime. Although in some instances the defence was not raised, their condition at the time of the offence must at least have approximated to some kind of insanity, and in some cases the abnormality endures.

When passing sentence on one of them, the Judge said that he would be punished all his life by guilt and remorse for what he had done. This murderer in the ensuing years showed neither guilt nor remorse and was probably incapable of experiencing such normal feelings.

Cases IV and V may afford justification for the psychiatric examination of sexual offenders at the time of their first or second sexual offence. Treatment at that stage might avoid further and more serious assaults.

MURDER AND ALCOHOL

Alcoholics and near-alcoholics often have psychiatric abnormalities which precede alcoholism. Some of these abnormalities may be due to intense anxiety leading to repression of normal instincts, particularly anger and sex, resulting in abnormally inhibited behaviour when sober. The instinctual release attained through alcohol could then become unduly intense. The ability of such people to control their instinctual behaviour is abnormal, being "all or nothing".

In the psychopathology of aggression, one can recognise two distinct elements. One is of course hostility, and the second is the lessened anticipation of punishment. This is not restricted to the alcoholic alone. Dr Ralph S. Banay made a study of over 3,000 alcoholic offenders admitted to Sing Sing Prison, and he claimed that the most significant difference between the alcoholic offender and the general offender lay in the higher incidence of assaults by the former as compared with the latter. He says: "In the state of intoxication . . . judgment is impaired, the ego is inflated, and the intoxicated individual may yield to the urge of instinct which he was able to control when he was not under the influence of alcohol. He may commit violent acts, sexual offences, or violent crimes."¹⁹

Nevertheless, homicide—the most aggressive of all crimes—constituted 9 percent of the crimes committed by the "inebriate" group, and 8 percent of those committed by the "non-inebriate" group—not a significant difference. It may be that this extreme act of violence is so strongly inhibited that even intoxication does not release it more easily than the factors which account for it in sober people. Nor can there be proof that the act of homicide by the drunk person would not have been committed by him in the absence of alcohol.

A study of the files leaves no doubt that in many murders, alcohol was a factor, and in at least eight cases an important, if not causative, factor. One of these took place in 1947:

Case VII

The culprit was 44 years old at the time of the murders. He had begun drinking at an early age and his indulgence became persistent and heavy. He was convicted several times of offences related to alcoholism—assault, obscene language, and breaking, entering, and theft. By the age of 37 he had had his first bout of delirium tremens and suffered from frequent headaches, blackouts, and loss of memory. His drinking became heavier

¹⁹*Alcohol, Science, and Society*: New Haven. Quarterly Journal of Studies on Alcohol, page 146.

HOMICIDE

than ever about two months before the murders, and he took bromide to settle his nerves. There was evidence of alcoholic hallucinatory states.

On the day of the murders he had been drinking heavily, and was greeted in the hotel bar by an acquaintance. Without provocation he shot this man, fired round the bar wounding two others, left the bar, and started shooting at passers-by. He fatally wounded a boy passing on a bicycle, and was still firing when the police arrived. He was shot in the groin, and this wound, combined with extreme intoxication, resulted in his being in jail for some time before he knew what he was charged with.

The defence submitted that he was not guilty because he was unable to understand the nature of his act through intoxication. But the Judge ruled that he became intoxicated through his own voluntary act, and that the defence was not available. He was found guilty on two charges of murder and was sentenced to life imprisonment. Eventually he became one of the most trusted and dependable men in prison.

After release, he was in steady employment until 60 years of age. He remarried, lives with his wife in his own home and strictly abstains from alcohol.

Case VIII

Another case in which alcohol was a causative factor occurred in the same year. Two men had been drinking together and became argumentative. One accused the other of being a liar and was accused in turn of being ignorant. The situation deteriorated with the consumption of more alcohol, and eventually the two men left to put their respective cases before an independent arbiter.

They drove to the home of the culprit, who went in and got a gun. He brought this to the pavement and asked his adversary where "he would like it". The latter replied: "Right through the heart". The gun went off and fatally shot him. The culprit drove to the police station and made a full admission of guilt. At his trial he was found guilty, with a strong recommendation for mercy.

Alcohol often releases explosive reactions related to vengeance, jealousy, or pent-up resentment. Provocation by wife or relatives over a period may lead to a breakdown, in which alcohol helps to bring on the crisis. A defence of provocation in such circumstances was led some years ago when a man killed his wife, who with her relatives had become an increasing burden to him. The jury brought in a verdict of guilty with a strong recommendation for mercy. Such pleas sometimes cause the verdict to be reduced to one of manslaughter.

Case IX

Jealousy and drunkenness were the significant factors in the case of a married immigrant living in a *de facto* relationship with a woman with whom he frequently quarrelled. They both drank—he very heavily—and their quarrelling had much to do with their drinking.

During a period of temporary separation from her lover, the victim was living in a flat where a party took place. Everyone became more or less intoxicated. The culprit, who was also at the party, tried to persuade her to return to him; after first agreeing, she later changed her mind. When he accused her of infidelity, a violent quarrel took place and she received several fatal stabs with a carving knife.

The defence did not dispute culpable homicide, but put forward provocation, drunkenness, and temporary insanity in defence. The accused was sentenced to death, but the sentence was commuted to life imprisonment.

The remaining murders involving alcohol are similar in most respects to the cases cited. In many instances it does appear that without the effect of heavy drinking the offence might not have taken place, and the evidence often shows that alcohol did contribute to crime. Much has been written on psychiatric conditions related to alcohol—mania-a-potu, delirium tremens, Korsakov's psychosis, alcoholic delusional and hallucinatory states, chronic alcoholism, and dipsomania.

Wily and Stallworthy have this to say: "There is difficulty in distinguishing between mania-a-potu and the violent outbursts common as a result of ordinary intoxication in subjects habitually aggressive and impulsive, and whether for legal purposes the condition amounts to insanity is an issue for the Court to decide, with considerable odds against such a defence being accepted. A criminal act may be the result of delirium tremens, or the delirium may supervene in a chronic alcoholic after the committal of a premeditated crime. Although delirium tremens usually follows prolonged drinking and dietary inadequacies, East records a typical attack beginning 10 days after release from a long prison sentence. 'The terrifying hallucinations of delirium tremens may result in murder, violent assaults, or suicide.'"²⁰

One of the illustrative cases cited above is an example of murder resulting from prolonged drinking, with possible hallucinations and delusions.

MURDER BY MAORIS

Thirteen murders were committed by Maoris from 1940 to 1964. The criminal law recognises no distinction between Maori and non-Maori, but social and cultural distinctions undoubtedly still exist.

Maori leaders would probably plead mitigation on cultural and sociological grounds in only two of the 13 murder cases. These are illustrations of homicide as an acceptable traditional Maori response to a situation where there was loss of face and breach of trust. Non-Maoris would probably have reacted violently to similar situations, but the vengeful taking of life was the not uncommon Maori reaction. The man who did not exact vengeance lost face and caste. In both the

²⁰Wily and Stallworthy, *Mental Abnormality and the Law*. N. M. Peryer, Ltd., Christchurch, p. 205.

cases which follow the defence of provocation was raised, and the attention of the jury was drawn to the influence of Maori tradition.

Case X

The first murder was committed by a three-quarter caste Maori, X. He had no full brothers or sisters, and the composition of the household seems to have been fluid; half-sisters, half-brothers, and foster children lived at the home from time to time in addition to his father and mother.

He was educated at a native school and left at about 14 or 15 from standard V. He assisted on his father's farm until he was 17, then moved from place to place working as a farmhand or scrubcutter until he arrived in a country town six months before the offence. He had had two *de facto* relationships before he took one of his subsequent victims to be his third "wife". He had never previously come before the Court, and was not addicted to liquor.

At the time of the offence X. and his wife slept on the floor of the local Maori meeting house. He explained that in spite of earning good money, they could find no better accommodation because of their Maori customs. Seven other people slept in the meeting house, including the small child of the accused by one of his previous relationships.

One of the other men in the meeting house began to make overtures to X's "wife" and eventually persuaded her to sleep with him in the only bed in the meeting house. X. lay down beside his child, thought about the whole situation and then got up and went outside for an axe. He came back, struck his rival on the head and then killed his wife.

He went out, told two friends what he had done, and said, "The only thing I can do now is to go down to the police station". The three men hired a taxi, went down to the railway station where they had a cup of tea, and then went to the police station and made a full statement.

X. was found guilty, sentenced to life imprisonment, and spent over 11 years in gaol. He was released to good board and employment and two years later he requested permission to marry.

Case XI

The second Maori murderer was also a three-quarter caste, one of 15 children, all of whom reached Standard VI. An ambitious youth, he returned to school to matriculate at the age of 20. He joined the Armed Forces and served for five years during the war. His intelligence was good-average.

He married at the age of 25 and was apparently happy for a time. Less than two years later a baby was born, and at about this time the marriage began to deteriorate. He charged his wife with neglecting him and the baby, and with spending too much time away from home, because she was having an affair with a neighbour. It was shown in evidence that she did spend a considerable time in this neighbour's house when her husband was at work.

The latter sought help from friends and relatives and, as a result, a temporary reconciliation was effected. But soon afterwards his wife began asking for a divorce and went to live with the neighbour. Her husband called her home one day, hit her on the head with a hammer and slit her throat with a razor. He then struck the neighbour with the hammer and killed him also. He was found guilty of the manslaughter of his wife and the murder of his neighbour.

He was a model prisoner and extended his education to university level. There seems little doubt that he had been very fond of his wife, and unhappy and disturbed by what he thought was her affair with another man. Since his release he has been no problem in society.

This type of reaction is repeated in three other cases where jealousy was aroused. For the rest, five murderers killed for gain, the others for a variety of motives, or for no apparent motive.

MURDER BY JUVENILES

Five male and two female juveniles, whose ages ranged from 14 to 17 years at the time of the offence, were convicted of murder between 1940 and 1964. Five of them were sentenced to be detained at Her Majesty's pleasure, and two boys to life imprisonment.

Case XII

The two boys referred to, aged 14 and 15 years, escaped together from a Child Welfare home and fatally wounded a farmer whose house they raided.

Both accused were found guilty of murder with a recommendation for mercy, and the Judge commented that this was a right verdict which might have a very salutary effect in this country. One of the boys was described as of average intelligence and fair scholastic attainment, the other as intellectually retarded and a psychopathic personality. He escaped briefly from prison and was also charged with two attempted escapes. Both boys had unsatisfactory home backgrounds, and had appeared in the Children's Court on charges of dishonesty before the murder took place.

Case XIII

Another joint murder was committed by two girls aged 15 and 16 years. The older of the two was physically handicapped as a result of osteomyelitis.

This girl formed an emotional attachment with a younger girl who was then recuperating from tuberculosis. In her childhood in England the latter had a fairly unsettled background of air raids, evacuation, physical breakdown, and consequent frequent absences from home. Her parents were highly intelligent.

The two girls found solace in each other's company and indulged in excessive fantasy. Eventually their parents decided that they should

be separated—on the grounds of ill-health one was to be taken by her father to another country. The other decided that her mother was the only obstacle to her accompanying her friend, and both girls agreed to kill her. They considered themselves apart from ordinary law and morality, and felt justified in allowing nothing to stand in their way. There is evidence that their exalted state had built up to a climax over the preceding year with a strong emphasis on murder and violence. They killed their victim with a brick in a stocking; while later admitting the killing, they did not admit to any feelings of guilt.

The defence in the case was based on a plea of insanity. All five doctors in the case agreed that the girls were unbalanced, and three found them to be certifiably insane at the time of the murder and the trial. They were classified as *folie a deux* paranoiacs of an exalted type. But the defence failed to establish that they were insane according to the McNaghten Rules and both were found guilty. They were sentenced to be detained at Her Majesty's pleasure and were released after five years.

Case XIV

Two of the remaining three juveniles involved in murder were found guilty of sexual killings. One boy aged 14 years killed an eight-year-old girl in the act of sexually assaulting her. (His older brother had previously made a Children's Court appearance for the attempted rape of a seven-year-old girl.)

Case XV

A 14-year-old boy was involved in the other case of sexual murder, but unlike the previous case, he was of below-average intelligence, as were his unsatisfactory parents. Some time before the murder the boy had been suspended from school because of sexual misbehaviour. He sexually assaulted and strangled an eight-year-old boy in a city park.

Case XVI

The last and most recent juvenile murder in this group was committed by a 17-year-old boy. He had been drinking heavily and became involved in a fight at a dance. He got a knife and stabbed his victim—apparently without motive.

All three were detained at Her Majesty's pleasure.

MURDER BY FEMALES

Only seven females were convicted of murder between 1920 and 1964. In the same period 90 men were convicted. Many theories have been propounded to explain the statistical difference between male and female offending. Professor Pollak suggests that crimes committed by women are concealed by their "indirection and deceit", and that women

engage in a wide variety of crimes incidental to their roles as wives, housekeepers, nurses, and mothers. Pollak lists among the crimes—murder (usually by poisoning) and infanticide.²¹

By coincidence, the seven female murders took place in the brief period 1948–1954. Eleven years were to pass before the next conviction of a woman for murder. A murder by two juvenile offenders has been outlined earlier, and the remaining five present a varied pattern.

Case XVII

In 1947 a 49-year-old divorcee demanded that her lover's wife divorce her husband and thus release him to marry her. The request was refused, and the lover returned to live with his wife. At the subsequent murder trial, evidence was produced that there had been a previous attempt to assault, or murder the wife on the part of the accused and a witness.

After husband and wife were reunited, the accused went to the victim's house one day after the husband had left for work. Accused had a key and gained entry. That night the victim's dead body was found by her husband. The skull had been severely battered.

The police case rested on the evidence of a previous assault and on the accused's failure to account for her movements at the time of the murder, in spite of an attempt to persuade a witness to commit perjury. The accused also had possession of the house key. Finally, she attempted to commit suicide when the police called to interview her about the murder. The accused in a lengthy statement denied the charge and blamed her lover.

She was found guilty and sentenced to life imprisonment. Released after almost twelve years, she now lives in her own home.

Case XVIII

In the next case the motive was less apparent. A farmer's wife had died after complaining of headaches and other pains. The accused was alone with her at the time of her death. From that time the accused stayed as housekeeper for the widower.

Five years later a female cousin of the widower came to stay as a guest in the house. She was given strychnine in food and sweets but without fatal results. But suspicion was aroused, and when the body of the farmer's wife was exhumed, it was found to contain a large quantity of strychnine.

Inexplicably, the accused had bought strychnine to kill her first victim and had kept the tin until police investigations began five years later.

The evidence against the accused was largely circumstantial, but she was found guilty and sentenced to imprisonment for life. She was a model prisoner and became a trusted cook. She spent 11 years in prison

²¹Pollak, Otto, *Criminality of Women*, 1961, Barnes and Co., New York.

and upon her release in 1959 established good relationships with her family, continued to be an excellent worker and has made a satisfactory social adjustment.

Case XIX

The third female murder was committed by a 22-year-old Maori woman who was living in a *de facto* relationship with a Chinese market-gardener. She had no knowledge of her father, and her mother had died when she was about 12 years old. From that time she lived with friends until they rejected her for her dishonesty. She was convicted on several charges of theft and eventually sentenced to Borstal training. She escaped from custody and was still at liberty when her sentence expired.

There were two children in the household in which she finally settled—her own illegitimate eight-months-old daughter, and an 18-months-old illegitimate boy, the son of friends of her *de facto* husband. The boy had been informally adopted by the couple, but it appeared that she grew tired of looking after the child after her own baby was born.

When the boy disappeared, accused suggested he had been kidnapped, but later admitted that she had taken him to the river bank, put him in a sack, and drowned him. The post mortem showed severe and recent head injuries, sufficient to cause unconsciousness, and a newly fractured right thigh. She was found guilty; although it was conceded that she was of very low intelligence, she was held capable of knowing what she was doing and that it was wrong.

She was released in 1960 and after a few months was admitted to hospital where she died in 1961.

Case XX

The next case is that of an illegitimate girl who lived with her father and foster-mother. After the death of her foster-mother, the girl boarded at school until she was 16 years old. She then went out to work as a domestic and became self-supporting. Five years later she was twice convicted of theft.

At the age of 25 she had an illegitimate child who became a State ward. She evinced a keen interest in animals and was instrumental in forming a Tail-waggers Club. She became engaged, but her fiance was killed at Tobruk. Although an associate of drinkers and gamblers, she was noted for her kindness to the sick and elderly.

As secretary to the club, she was required at short notice to produce over £200, but there was only about £1 in the account. There was no suggestion of fraud—she had used the club's money and some of her own money, too, for club purposes without making entries in the books. But she felt that she must raise the money, and heard that two elderly female acquaintances kept cash in their home. She visited the house and stole a bundle of £5 notes, but was disturbed by one of the old ladies. Accused thereupon strangled both women with a nylon stocking.

She had two trials. The first jury was discharged on the fourth day of the trial because of an irregularity concerning the jury. She was eventually found guilty with a strong recommendation to mercy, but was sentenced to death. This was later commuted to life imprisonment. Doubtless there was reluctance to hang a woman.

She died in hospital of a malignant disease while on parole from prison six years after conviction.

Case XXI

The last of this group was a young married woman who, at the age of 24 years, killed her two eldest children, aged six and four years. She wounded a third and youngest child and inflicted cuts on her own body.

She was 17 years old when she married a man who caused her much misery before he died as a result of a street fight in 1948. Her plight was desperate. She was a widow with three small children at the age of 24 years; she suffered from goitre, and during the winter of 1949 she and the three children had been sick for several months. They were living on her widow's pension and child allowances, about £4 a week.

At Christmas time she tried to kill herself and the three children by gas, but was interrupted and the plan failed. She then killed the two oldest children by stabbing. The examining psychiatrist reported that when she resolved on suicide she was in a state of considerable and acute distress and could not perceive any acceptable alternative. But there was no warrant for the view that she was not legally responsible within the McNaghten Rules. The jury returned a verdict of guilty with a very strong recommendation to mercy.

After about two years in prison she was transferred to a more open institution but two years later was committed to mental hospital. Eleven years later she was released.

As with the other small groups, these five cases have little in common apart from the sex of the murderer. Motive and method vary greatly. As far as is known, the female murderer is rare in New Zealand and no generalisation is possible. It was not until 1965 that another female was found guilty of murder by poisoning, and in 1966 a woman was convicted of the murder of her mother.

MISCELLANEOUS

There are five men convicted of murder whose crimes are unique and who cannot be included in any grouping. They include three Niue Island men who killed the Government Commissioner on the island and were sentenced to death. The sentences were commuted only after New Zealand prison officials had reached Niue to carry out the hangings.

The other two men were convicted of the murder of two sly-grogging rivals. The new factor in this case was the appearance of a criminal sub-group in the New Zealand community. The murder pointed to the existence of an underworld, or sub-culture, where immorality, dishonesty,

and violence are accepted norms of behaviour. Though such a group may have existed for many years, it had never, so far as was known, revealed itself in rival violence of the kind disclosed.

Apart from the 28 murders already mentioned, the remaining murderers are included in two large groups, some of whose number overlap into the categories already classified. By and large they are those who have murdered for financial gain, or because of jealousy or revenge. Statistically, they are the largest groups in this and in other countries.

HOMICIDE AND MENTAL ILLNESS

It has been estimated that about 12 percent of a prison population is mentally sick.²² East classifies these abnormal people as subnormal, psychopathic, and psychoneurotic. Although no scientific survey has yet been undertaken in New Zealand, a similar proportion may be mentally ill. An average of 2 percent of the New Zealand prison population is referred each year to mental hospital.²³

Whitlock²⁴ suggests that the incidence of abnormality in the total British population does not differ greatly from that found in prison, i.e., 12 percent. But he says: "The *distribution* of illness will differ, as the prison community will certainly have a larger number of psychopathic personalities as well as epileptics. It would be difficult on these estimates to support the notion that crime is due to mental disorder, or is to be equated with illness, unless one is going to postulate that the criminal act itself is a symptom of illness."

The figures for homicide give a different picture. As we have seen, statistics for England and Wales show a remarkable similarity to those for New Zealand. In the period 1900 to 1949, 61 percent of British murder suspects either committed suicide, or were found unfit to plead, not guilty on the grounds of insanity, or certified insane after trial. The equivalent New Zealand figure for 1920 to 1955 was 59 percent—a difference of only 2 percent. (It may be contended that all those who committed suicide were mentally ill but a contrary view is held by Dr D. J. West.)²⁵ Whitlock believes that the total figure for England and Wales may be close to 70 percent.

There is, therefore, a striking contrast between the incidence of mental illness in the total prison population and that in the homicide group—12 percent in the former and 70 percent in the latter. Such figures indicate that murder is an abnormal act, committed by predominantly abnormal people.

Colin Wilson in the introduction to an *Encyclopaedia of Murder* maintains that 99 percent of murders are unpremeditated—"brawls in

²²East, W. N.: *The Roots of Crime*.

²³Totals for 1960-64: 24, 18, 33, 23, 33 persons transferred to mental hospital from New Zealand prisons.

²⁴Whitlock, F. A.: *Criminal Responsibility and Mental Illness*.

²⁵West, D. J.: *Murder followed by Suicide*, Heinemann, page 143.

pubs, family quarrels, the sudden violent impulse." By this kind of classification, he supports his thesis that belief in the abnormality of the murderer is part of the delusion of morality on which society is based. "The murderer is different from other human beings in degree, not kind. All our values are makeshift; a murderer simply goes further than most people in substituting his own convenience for absolute values."

Wilson distinguishes three types of murder:

- (a) The murder that springs from frustrated vitality—a few sexual murders, a few political assassinations;
- (b) The murder arising from sheer brutality, insensitivity to suffering—no pity. Wilson calls this the opposite of what we mean by civilisation (i.e., essentially learning to feel for other people). This group is mainly composed of gangsters;
- (c) Murders done out of the narrowness of lives and lack of imagination.

Each case of murder presents by implication the way in which a murderer "sees" the world. It is almost as if one were to ask every murderer the question: What is the value of life? And got from him the answer in quite precise terms: £10, a snub, his wife's infidelity.

If Wilson's classification were applied to New Zealand murders, we would have two or three cases of sexual murder in (a), possibly two murders in (b), and the overwhelming majority in (c). But it is doubtful if many murders are as simple as Wilson suggests.

FACTORS IN HOMICIDE

The value that an individual places on human life is the product of a complex of factors. It is often culturally learned and modified by personality factors. There is a great difference between the value placed on life by the Mafia and by the New Zealander. A Nazi concentration camp commandant would have had a very different set of values from the ordinary Englishman. The Maori attitude to life is not that of the European. And, according to one writer, values vary among United States regions.²⁶

A study of all murders would reveal a continuum of values, based on all sorts of material and emotional coinage. There can be few cases where mere money, or mere property, or one simple emotion, explains the killing by one person of another. A sudden violent impulse may well be the latest development in a dynamic interaction of feelings and attitudes. A fatal family quarrel is almost always the climax of prolonged deterioration in personal relationships. Yet it is arguable that the murderer often does not intend to go as far as to kill his victim.

"A considerable proportion of those faced with a murder charge are, in a sense, accidental killers. Overcome with anger, passion, or jealousy,

²⁶Brearely, H. C.: *Homicide in the U.S.* (Chapel Hill: University of North Carolina, Rep. 1932).

they have strangled, shot, stabbed, or otherwise encompassed a death which a moment beforehand was not thought of, and which is instantly regretted. Passionate people should not lose their tempers, but given such a nature, and caught in the web of emotion and stressful circumstances which has enmeshed them, their act is often the understandable outcome of an unhappy situation, rather than a manifestation of monstrous and deliberate wickedness."²⁷

This is borne out in the number of murderers who go to the police and make a full confession, and by the number who commit suicide before arrest. Many victims are innocent parties, sometimes even strangers to the murderer. There are also victims who have in some way connived at the fatal situation. Ridicule, infidelity, or persistent frustration may break human controls and induce the final act.

Breaking points must vary with the maturity and health of the individual. The secure person can tolerate or withstand a greater assault than can the insecure or inadequate weakling. A feeble-minded man may be readily persuaded to kill for money, or to stand guard while his persuader does the killing. Persistent physical or mental cruelty may induce a state of such frenzy and violence that not only is the torturer killed but also anyone else who happens to be near. The cuckold may respond with homicide or a cynical shrug.

By virtue of our intelligence and maturity, we take our place in the human continuum of efficiency and well-being. The traditional view that a line of demarcation exists between the man who is so insane as to be relieved of all responsibility for his criminal acts, or so sane as to deserve the supreme penalty still finds support. But it is becoming increasingly apparent that this view is a legal fiction unsupported by the facts, and that there are many gradations between what we call sanity and what we call insanity. Many murderers, while not so insane as to satisfy the McNaghten Rules, are in fact abnormal people.

This view gained tacit acceptance in the days of capital punishment, when the condemned man was examined by psychiatrists who reported to the Executive Council. So the Council was helped to decide on the degree of a murderer's responsibility and, consequently, on his suitability for reprieve or death. There was in this practice an acknowledgment that circumstances, motives, and personality factors vary from one murder to another and, therefore, that responsibility, or "punishability", varies, too.

Dr Neustatter has said that the degree of culpability in murder differs as in any other crime. That there should be only one official sentence for crimes of widely differing degrees of moral obliquity has concerned the public conscience in many countries. Yet it must be conceded that if

²⁷Wily and Stallworthy: *Mental Abnormality and the Law*. N. M. Peryer, Christchurch, pp. 416-417.

an attempt is made to legislate in terms of moral obliquity, it is almost an impossible task to define the necessary categories.²⁸

In 1950, the late Dr T. G. Gray, former Director-General of Mental Hospitals, tendered evidence to the Joint Committee on the Capital Punishment Bill. He had, in his official capacity, been called upon to examine many prisoners under sentence of death. In his evidence he quoted cases to show how very different murder cases are in circumstances and motive:

- "1. This was an Englishman, of previously irreproachable character, who murdered his wife and two children in 1932. It was in the depression years, and this man was earning £1 8s. per week, and his wife and children were unable to get sufficient food and clothing. He was hopelessly in debt but was too proud to accept charity. In a fit of depression he killed his family. A plea of insanity did not succeed, because the case could not be brought within the McNaghten Rules, and he was sentenced to death. The sentence was commuted to life imprisonment.

He served seven years and three months and was released on probation. He was finally discharged at the end of another two years and four months. When last heard of in 1943 he was doing well.

2. This man was convicted in August 1930 of the murder of a girl with whom he had been keeping company. This girl had treated him very shabbily and had broken off their engagement. He was anxious to regain certain letters which she possessed. In the course of a quarrel he hit her in the neck with a knife and severed a vein. There was no premeditation in this case—the fact that he had a knife in his hand at the time was purely incidental.

On my report to the Minister of Justice, the sentence was commuted to life imprisonment. The convicted man served 10 years and left the Dominion in 1940.

3. (Aged 19 years): Was a farmhand who in a fit of jealousy shot a rival for his girl's affections. He was in 1931 sentenced to death, but the sentence was commuted to life imprisonment. He served eight years and was granted probation. The reports of the probation officer were that he was an exemplary character. He was discharged in 1943 and served with our army overseas.
4. This young man in his 'teens killed a man on Quail Island, in Lyttelton Harbour, in 1923. The victim, a homosexual, dominated the accused who in despair shot him under circumstances which showed a great deal of deliberation.

He was found not guilty on the grounds of insanity of which there was very flimsy evidence.

²⁸Neustatter, W. Lindsay: *The Mind of the Murderer*. Christopher Johnson, 1957, p. 1.

He was sent to Borstal where under the kindly guidance of the superintendent, he became an expert in pig-farming. He was allowed out on probation in 1935 (after 12 years), was discharged at the end of two further years and was last heard of in 1941 when he was doing well."

To these cases should be added a more recent murderer executed in 1956. The three psychiatrists reported on him as follows:

- "1. He is a young Maori, 20 years two months old at the time of the crime.
2. He is of dull normal intelligence.
3. The motive of the crime was theft.
4. He intended to use some force if necessary but did not intend to murder.
5. He is neither insane nor mentally deficient in either the legal or the medical sense (i.e., he does not come within the provisions of section 43 of the Crimes Act, nor could he be certified as a mentally defective person within the meaning of the Mental Health Act 1911).
6. It would be difficult to find a worse home environment than the one in which he was reared until 14 years old. Because of these early environmental influences, with their encouragement towards criminal habits, and the total absence of social training, we find that he has been less able than the average to control his inherent impulses when confronted with difficulties. In this respect we are of the opinion that he is rather less responsible for his conduct than would be the average young man of his years."

PSYCHIATRY AND HOMICIDE

Dr Szasz warns that psychiatry is playing too much part in legal procedures and that much psychiatric classification is suspect. He also believes that the science of human behaviour, applied to the legal handling of criminals, need not necessarily make the procedures more humane, rational and "just". They may lead to results which seem undesirable and dehumanised.²⁹

These views cannot be ignored at a time when it is possible for a responsible murderer to be successfully defended on a plea of insanity based on a mental disease hitherto unheard of and, therefore, difficult to refute. However, Szasz emphasises only one aspect of the role of psychiatry—a subject which requires study and research.

Szasz also makes the point that in many cases of murder the choice for the jury is simply between two alternatives—"Guilty" or "Not guilty on the grounds of insanity". In the first case a man goes to

²⁹*Some observations on the Relationships between Psychiatry and the Law.* A.M.A. Archives of Neurology and Psychiatry, 1956.

prison; in the second he goes to mental hospital. Yet it is doubtful whether the distinction implicit in this terminology is anything more than an intellectual and semantic hoax. For what is a "hospital" to which one is committed against one's will if not a "jail"? And if the release of the prisoner-patient is in the hands of the hospital superintendent, and the Director of Mental Health, do the latter not play the role of the Parole Board?³⁰

In spite of the necessary warnings, no one would dispute the importance of expert psychiatric evidence in cases of murder. Where so much abnormality is involved, there must be evidence adduced as to the state of mind of the accused. Yet under the present law there are difficulties for the psychiatrist in the witness box.

One such difficulty arises from the fact that a Court has to come to a definite decision in a way which is alien to the clinician. The following is a Canadian example of such a situation in Court. A young man is on trial for the murder of his girlfriend and the prosecutor cross-examines the psychiatrist:

"So I ask you, Sir, in your opinion was he, or did he indicate in any way, that he was sorry that he killed the girl?"

"He did not say he was sorry he had killed this girl and he was expecting the electric chair".

"Doctor, can't you answer that question, yes or no?"

"I can only assume it on the basis of what I observed. I observed . . ."

"What is your opinion, Doctor? Was he, or was he not, sorry that he killed this girl?"

"My opinion is that he regretted killing the girl but somehow felt it was on the cards that something like this was going to happen in his life and that he no control over it, and if this was the way it was going to be—he was going to get the chair and here it comes."

"So your answer, Doctor, is that in your opinion, from your examination of him, he was sorry that he killed the girl. That is true, isn't it?"

"I would say that he was sorry but felt that there was nothing he could do about it."

"Doctor, are you trying to hedge on the answers?"

"I am trying to give you an accurate answer as to what I felt was going on in the man's mind."³¹

Similar examples can be found in the transcripts of many trials. It is essential for counsel to have definite answers in stereotyped words and phrases to strengthen their case. For the psychiatrist it may often be

³⁰Szasz, T. S.: *Psychiatry, Ethics, and the Criminal Law*. Columbia Law Review, Volume 58, p. 196.

³¹Quoted by J. W. Mohr, Canadian Psychiatric Association Journal, Vol. 9, No. 2, p. 104.

impossible to use such currency.³² Such difficulties confronting the psychiatrist can be understood when comparing the roles of pathologists and psychiatrists. They are both frequently called to give evidence in murder cases, and while courts of law frequently accept the evidence and opinion of pathologists without question, the evidence of psychiatrists is frequently disregarded. The reasons may be seen in a comparison of the two disciplines in action and the attitudes of laymen to them.

PATHOLOGICAL EVIDENCE

Pathology is that part of medical practice which deals with demonstrable abnormalities, which in many cases can be exhibited to the lay person when an explanation is being made—for example, the damaged or undamaged skull, which can be used as a basis for explaining what has happened physically; human tissue which has been damaged; chemical tests, which include toxicology, and the determination of the impact of blood stains or seminal fluid marks. The pathologist works from a well-established, concrete basis, with many facts established. From such a starting point, it is easy to express opinions and, as often happens, draw inferences, both of which are almost always acceptable to Courts for several reasons, listed below:

- (1) Laymen know little about anatomy.
- (2) Laymen are always impressed by the unusual and demonstrable.
- (3) In Court pathologists can be precise and impressive in giving their evidence-in-chief. It is factual and scientific. Inferences and explanations are thus fairly easy.
- (4) Pathologists are able to work with expert police criminal investigators so that they have substantial backing from other expert evidence. They almost always appear for the prosecution, although there have been cases where pathologists have disagreed.
- (5) Their names become well known to the public because they appear in cases which are frequently the most serious offences against the law, which receive wide publicity in the press and which appeal to morbid and ghoulish public interest.
- (6) Their evidence is mainly objective.

³²One eminent New Zealand psychiatrist had this to say:

"The main reason that I have for many years avoided giving evidence in Courts is that I am unable to present at court what I know are relevant psychological data and what I can present is very easily misinterpreted and can be made to seem foolish. The fact is that to communicate in every day language information which is strange and has little to do with common sense is an extraordinarily difficult exercise. My belief is that it will be many years before a psychiatrist can convey his findings to Judge, jury, and counsel in a fashion that is not open to misinterpretation, miscomprehension, and other processes that lead to inadequate appreciation in the intellectual and emotional sense. Believe me, I cannot but accept the observation that psychiatrists do make stupid statements in court. However, they are not alone in this and, bereft of the aura that surrounds them, magistrates, lawyers, and judges have also been known to make ridiculous statements. But, I suppose, it is the material that psychiatrists endeavour to handle that makes it perhaps easier for them to say silly things than other expert witnesses."

PSYCHIATRIC EVIDENCE

Psychiatry, on the other hand, is that part of medical practice which deals with abnormalities of the mind. It is not possible to demonstrate the mind as a whole or in part to the layman, in any way comparable with what the pathologist can do in his sphere. There are no outward and visible physical aspects of mind which can be taken into Court and demonstrated by a psychiatrist, as can be done by a pathologist. Certain tests as to finding the level of intelligence can be explained and the results demonstrated—but that is about all that can be produced in a factual way. Little precise information is known about the mind. There are many theories about its nature and the manner in which it works.

There is no clear agreement as to what is normal, and when normal ceases and abnormal operates. The pathology of mind, known as psychopathology, is studied by many schools of thought which are based on theories. There are few generally acceptable findings.

The psychiatrist, therefore, starts off on an unsure base. Admittedly some grossly abnormal states of mind are accepted as constituting insanity; they have accepted outward and visible signs but, by and large, their existence is not demonstrable to a Court. The opinion given by a psychiatrist is based, at best, on his own objective observations from the examination of the patient and often on deductions and inferences from the behaviour of the individual as reported to him.

The psychiatrist has difficulty in getting his opinion accepted in the Courts for several reasons:

- (1) Laymen all have knowledge, or think they have knowledge, of the working of the mind, of emotions, of motives of right and wrong. They hear of the mind and abnormalities of behaviour from all manner of individuals, through many agencies such as newspapers, lectures, books, radio, and television.
- (2) There is nothing demonstrable objectively. The psychiatrist does not (as does the pathologist) deal with an inanimate specimen which can be manipulated at will and tested by dissection or chemical experiment. His task lies in interacting in oral communication with another person. From this interaction he draws conclusions which he may have to defend in Court. He can neither produce specimens of the patient's emotions nor precise numerical measurements of his motivation. Consequently his findings may appear more subjective and open to argument than those of the pathologist.
- (3) Frequently, except in obvious cases of abnormality, there are witnesses more or less expert, giving evidence on both sides.
- (4) The psychiatrist may be precise in giving evidence, but he is not on the same sound initial base as the pathologist. As a result he cannot be so dogmatic in reply to cross-examination. Accordingly, inferences and explanations are not as readily accepted as in the case of the pathologist.

- (5) Psychiatrists rarely get assistance from police witnesses. Frequently, they appear at the request of the defence, and then only because there is no other defence likely to succeed. The prosecution cannot call a psychiatrist as a witness unless it is in rebuttal of a defence raised.

It is unfortunate that psychiatrists so often disagree in public on murder cases, and that some psychiatrists are ranged on the side of the Crown, while others give expert opinion on the side of the defence.

If legislation admits the concept of diminished responsibility in the case of murder, the role of the psychiatrist may be more acceptable. He will be able to operate less rigidly than he does within the confines of the McNaghten Rules and, with greater elasticity in sentencing, there need be less of the adversary situation which arose between differing psychiatrists when capital punishment existed.

Professor F. A. Whitlock, in a study of medical evidence and criminal responsibility, has outlined the history of this medico-legal problem.³³

Although, as a result of the McNaghten Rules, medical evidence came to be called in criminal cases involving pleas of insanity, this evidence was not always received with universal favour. A good many Judges were scornful of psychiatric opinion.

Nowhere was this more evident than in the "uncontrollable impulse" controversy. However much medical evidence may testify to this particular phenomenon, it can always be refuted by the argument that nobody can really say whether an impulse was irresistible or merely unresisted. Despite two attempts made in 1874 and 1923, England refused to amend the law to admit the concept of irresistible impulse due to disease of the mind.³⁴

PSYCHOPATHY

Psychiatric issues had been clouded earlier by Prichard, a Bristol physician, who coined the term "moral insanity". This term came to be regarded as synonymous with psychopathic personality. It appeared that Prichard had used the word "moral" in the unusual sense of emotional but, unfortunately, it was assumed that Prichard was describing a form of illness manifested by disturbances of moral behaviour. The question now lay to distinguish between ordinary moral perversity and immoral behaviour due to mental disorder.

The concept of moral insanity was, understandably, attacked from the Bench. A number of cases of homicide came before the Courts in which the offender was obviously insane but did not show any delusional symptoms. These were claimed to be examples of moral insanity, but

³³Whitlock, F. A.: *Medical Evidence and Criminal Responsibility: An Historical Review of a Medico-Legal Problem*. The Medico-Legal Journal, Vol. 32, 1964, Part 4, pp. 180-185.

³⁴For a discussion on the role of the medical witness, see *The Lancet*, 15 October 1966, page 853, and 22 October 1966, page 898.

as the evidence rested on their homicidal acts, the defence found little favour in the Courts. Confusion was increased when the terms "moral defective" and "moral imbecile" appeared in the arena.

Eventually, dissatisfaction with the McNaghten Rules and with the confusion that lay beyond their bounds, was discussed at the 1953 Royal Commission on Capital Punishment. The Commission made a majority recommendation that the Rules be abrogated but, as an alternative, they recommended that the Rules should stand, but be amended to include the concept of irresistible impulse as a result of disease of the mind or mental deficiency.

The outcome of this British report was the Homicide Act of 1957, which retained the Rules, but introduced the concept of diminished responsibility which was accepted in Scotland for the past 100 years. The Act states that where a person kills, or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind, or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omission in doing or being a party to the killing.

The Homicide Act has led to a marked decrease in the numbers of persons found guilty but insane under the McNaghten Rules—many have been found guilty of manslaughter by reason of diminished responsibility. They may be imprisoned, sent to mental hospital, or placed on probation. So far the terms of the Act have been applied to persons suffering from a wide range of mental abnormality. This has included epilepsy, schizophrenia, manic-depressive psychosis, hysteria, and psychopathic personality.

While it is for the medical witness to testify to the mental abnormality, it is for the jury to assess the degree of impairment of responsibility arising from the abnormality. Despite the much greater use being made of psychiatric evidence, it still rests with the jury to decide the issue.³⁵

PSYCHOPATHIC PERSONALITY

Of all the categories of abnormality, none has caused more perplexity than the psychopathic personality. Three New Zealand murderers have been described as psychopathic, two of them sexual psychopaths. In England, when psychopathy has been manifested by severe sexual perversion leading to homicide, the Court of Criminal Appeal has accepted that the sexual abnormality is good evidence of mental abnormality sufficient to lead to substantial impairment of mental responsibility.³⁶ On the other hand, when psychopathy has been manifested by uncontrolled aggressive outbursts, the Courts have not been willing to accept these as evidence of impaired responsibility.³⁷

³⁵R v. Jamison [1962] 1 All E.R. 689.

³⁶R v. Matheson [1958] 2 All E.R. 87, and R v. Byrne [1960] 3 All E.R. 1.

³⁷R v. Spriggs [1958] 1 All E.R. 30, and R v. Byrne [1960] 3 All E.R. 203.

There is general agreement on the existence of a characteristic type of individual, marked by the following features:

- (1) A consistent lack of evidence of a normal conscience and of the ability to feel guilt or remorse.
- (2) An habitual tendency from an early age to act impulsively in anti-social ways with no prudent forethought of the consequences.
- (3) Inability to profit from experience and, therefore, failure to be deterred by punishment.
- (4) Freedom from any other form of mental disorder.³⁸

Such people are familiar figures in criminal Courts—the recidivist confidence man, the persistent liar, the person who delights in cruelty. So far, New Zealand has not produced a Neville Heath, described by Neustatter as a psychopathic sadist. But there is little doubt that at least three of the murderers described earlier were aggressive psychopaths, two being guilty of sexual killings.

The problem remains what to do with these people. In the sense of specific acts, no such thing as psychopathic behaviour exists. It is a pattern of behaviour that persists in some degree throughout the person's life; thus, the act may be repeated over a period of many years. According to Wily and Stallworthy, there is a "very strong tendency for psychopaths to mellow with the passage of time, and often in middle age and later their wayward urges abate sufficiently for it to be safe to release them". (This was so in the case of one murderer who, after a stormy history over the first 35 years of his life, slowly quietened into a manageable individual. He has since become an acceptable member of society). The interests of society demand the utmost care by the Parole Board to ensure that the psychopath has, indeed, ceased to be a menace.

Psychopathy is more than an extended behaviour pattern; it is notoriously resistant to punishment of any kind. Neither guilt nor anxiety exist in the convicted psychopath. Legal and penal sanctions are ineffectual, and he often becomes an expert manipulator of his environment.

"Whether the psychopath be segregated from society in a prison, a psychiatric hospital, or some special institution, is, perhaps, of little moment There is no convincing evidence that psychiatric treatment can alter him . . . we can be sure that he will repeat his crimes at the first opportunity, and that very often they will become progressively more serious."³⁹

A person of this type can often be diagnosed before murder is committed, and the law now provides for a sentence of life imprisonment

³⁸Wily and Stallworthy: *Mental Abnormality and the Law*. N. M. Peryer Ltd., 1962, p. 188.

³⁹Ibid.

for repeated sexual offences. New Zealand has at least four or five men who show the pattern of increasingly serious sexual offending usually involving violence and rape.

The problem of psychopathy could be lessened if it were one of the accepted psychoses. But difficulties arise in admitting psychopathy *per se* to the group of psychoses. First, there is little agreement on its origin, some doctors believing that it has an organic, some a functional basis, others that it derives from both. Second, there is no universally acceptable definition of psychopathy which excludes it from malingering or other evasive behaviour. Third, it has been described as the model of the circular process by which mental abnormality is inferred from anti-social behaviour, while anti-social behaviour is explained by mental abnormality. Old-time wickedness has become latter-day mental disorder; thus if a person is wicked enough for long enough, he may hope to be excused from responsibility for his misdeeds.

Barbara Wootton makes the same point when she says:

"Paradoxically . . . if you are consistently (in old-fashioned language) wicked enough, you may hope to be excused from responsibility for your misdeeds; but if your wickedness is only moderate, or if you show occasional signs of repentance or reform, then you must expect to take the blame for what you do and, perhaps, to be punished for it."⁴⁰

This argument is taken up by Nigel Walker in an article on *Psychopathy in Law and Logic*, in which he denies that mere frequency and incorrigibility are by themselves accepted by psychiatrists as sufficient evidence of abnormality, without any supporting evidence.⁴¹

The problem, therefore, remains unsolved. The psychopath will inevitably continue his psychopathic behaviour regardless of, and possibly because of, punishment. Because he feels no shame or guilt and is scornful of punishment, he will indulge in further and more serious anti-social conduct.

In evidence presented before the Royal Commission on the Law relating to Mental Illness and Mental Deficiency, 1954-1957, psychopaths were described as mentally abnormal patients whose daily behaviour shows a want of social responsibility and of consideration for others, of prudence and foresight and of ability to act in their own best interests. Their persistent anti-social mode of conduct may include inefficiency and lack of interest in any form of occupation; pathological lying, swindling, and slandering; alcoholism and drug addiction; sexual offences and violent actions with little motivation and entire absence of self-restraint, which may go as far as homicide. Punishment, or the

⁴⁰*Social Science and Social Pathology* (1959), p. 250.

⁴¹Walker, N.: *Psychopathy in Law and Logic*, Medicine, Science and the Law, Vol. 5, No. 1, January 1965.

threat of punishment, influences their behaviour only momentarily, and its more lasting effect is to intensify their vindictiveness and anti-social attitude.⁴²

DIMINISHED RESPONSIBILITY

In the 1961 debate on the Crimes Bill, the Minister made it clear that if capital punishment were abolished, the clause introducing diminished responsibility would be expunged. Such a step was no doubt warranted in the circumstances, and the principle of diminished responsibility was retained only as affecting the new charge of infanticide.

Clearly there had been a feeling that diminished responsibility had a place in the law on murder. The presence or absence of capital punishment seems irrelevant to the discussion of its desirability. Despite the difficulties associated with the concept, it may be a necessary corrective to the artificial limits set by the McNaghten Rules. "The centuries-old legal views upon human behaviour, and especially criminal behaviour, have had to yield to the pressures resulting from the evolution of psychological and psychiatric knowledge and understanding of the mind, and there is no reason to suppose that the evolution is complete of legal principles which will adequately protect society and yet permit the most humane and effective disposal of the offender."⁴³

THE DEATH PENALTY AND EXECUTED MURDERERS

The 1961 debate on capital punishment ended a decade in which eight men had been hanged—in all, 27 men were hanged from 1900 to 1957.

Capital punishment was mandatory for murder until 1941, when it was initially abolished by the Crimes Amendment Act. The Minister of Justice, the Hon. H. G. R. Mason, introducing this legislation, relied on the experience of Denmark, Sweden, and other countries, where capital punishment had been replaced by imprisonment for life. There had been no subsequent upsurge of murder in these countries—an indication that the presence, or absence, of capital punishment had little effect on the incidence of murder.

If capital punishment could not be justified as a deterrent, it could certainly not be supported as a reformatory measure. And since vengeance for its own sake was becoming less acceptable, capital punishment could no longer stand. This punishment was, therefore, abolished—but only for the time being.

A series of events led to its revival in 1950. Six convictions for murder took place in 1948—the highest number in any one year up to that time. Some of the murders gained considerable publicity. A woman brutally killed her rival. A man (later committed to mental hospital) killed his five-year-old stepson with a rock, and a woman was found

⁴²Report H.M.S.O., pages 117–128.

⁴³Wily and Stallworthy: *Mental Abnormality and the Law*, p. 388.

guilty of murder by poisoning. A man who had tired of his mistress shot and buried her; another man shot an acquaintance whom he suspected of harbouring his wife. At the Supreme Court sessions where this last case was heard, the Judge, Mr Justice Kennedy, endorsed a Grand Jury rider that capital punishment be reintroduced. A month later a young man with a previous conviction for sexual assault killed and raped a woman in shocking circumstances. Soon after, another Grand Jury, commenting on the alarming increase in major crime—especially murder—gave as a contributing factor the abolition of capital punishment.

If the campaign for reintroduction needed any impetus, it came in December of the following year. A man contemplating the murder of his mistress, her daughter and her mother, was reported to have said, "Even if you do murder nowadays, you only get eight years for it, that's the good Government we have". He then proceeded to murder his victims.

In the 1961 debate on capital punishment the Minister of Justice drew attention to the fact that this man spent three months under observation in mental hospital before his trial. He was convicted and eventually released after 16 years under an arrangement whereby he was to be closely supervised. After a few weeks he was recalled because of his abnormal behaviour, and committed to mental hospital.

Ironically, it was while the same man was a prisoner in the Auckland Prison that he was almost a victim of murder. A man, later diagnosed as a paranoid schizophrenic, spent several nights in his cell sharpening a dagger and making up his mind which of his fellow inmates he would kill. He wanted to kill the prisoner whom he considered to be most suitable. He chose as his victim the triple murderer. Next morning he lunged at him in the prison yard, but the dagger happened to lodge in a rib instead of penetrating to the heart.

The reason given by the schizophrenic for a murderous attack was that he wanted to be hanged. In his deranged mind, the presence of the scaffold was an incentive to murder. It would have been irony indeed had he achieved his ambition to be hanged for murdering a man who allegedly killed because there was no hanging.

As it happened, the following year produced eight convictions for murder, and in 1950 the newly-elected National Government passed the Capital Punishment Bill, reinstating the death sentence. It would seem that a majority in the National Party had never been convinced that hanging should have been abolished. But Mr J. R. Hanan voted against the Bill and it is known that the late Mr E. P. Aderman would have joined him had he not been absent from the House.

Eight murderers were hanged in subsequent years. Then a Labour Government again took office and, despite the provisions of the Capital Punishment Act, every death sentence for the next three years was automatically commuted.

In 1961, under another National Government, the 1908 legislation was replaced by a new code—the Crimes Act—and it became necessary once again to decide a proper penalty for murder. The 1961 Crimes Bill introduced a compromise clause creating two degrees of murder, and retaining the death penalty for capital murder, broadly along the lines of English legislation. But the Minister of Justice, the Hon. J. R. Hanan, himself supported an amendment moved by the late Mr Aderman abolishing capital punishment. Ten members of the National Party voted for abolition.

The first reading of the Crimes Bill took place on 13 September 1961. Mr Hanan made clear his own position on capital punishment from the outset: "Members know my views on the subject, and that in the light of information and experience in various parts of the world I am opposed to capital punishment in any form."

He reminded the House of the chequered history of capital punishment in New Zealand. He said: "It has been enforced and suspended and abolished, and reinstated and suspended again—a weathercock varying with every change of Government since 1935."⁴⁴

The Bill provided that a person accused of murder could raise a new defence of diminished responsibility. But the Minister promised "if this House decides in favour of abolishing the death penalty, I propose to move the omission . . . of the diminished responsibility clause".

A clause on aggravated murder provided for the two categories to which the death penalty was to apply. First it applied to planned and deliberate murders, such as those committed by poisoners; secondly, to murders planned or otherwise committed in association with another crime, such as robbery or rape. The Minister drew attention to the possibility of injustice arising in the application of this clause, in interpretation by juries, and in the definition of "planned" murder. "Another objection to the clause is that it takes into account the circumstances of the murder only. It ignores the history and the circumstances of the murderer." He made it clear that if the death penalty were abolished, the sentence of imprisonment for life in the case of the type of murderer who had been executed in the past would mean a longer sentence than that being served by the average lifer.

The second reading of the Bill was debated on non-party lines. The Deputy Prime Minister, the Hon. J. R. Marshall, put forward six arguments in favour of the retention of capital punishment. First, he argued for the deterrent value of the sentence, and the words of the triple murderer were cited.⁴⁵ Second, the death penalty was the most emphatic denunciation of murder that the community could give. Third, he believed in capital punishment "because I believe in the infinite worth

⁴⁴*Hansard*, Vol. 328, p. 2206. Reference was made to a convicted murderer sweating in his cell, waiting for the results of the general election.

⁴⁵*Cf. supra* page 62. Another murderer convicted in 1962, evidently not aware that capital punishment had been abolished, said "I suppose I will get hung for this, sergeant."

of human life". Fourth, the death penalty was justified because imprisonment for life was worse than death. ("We cannot hold a sane man in prison for the term of his natural life.") Fifth, the death penalty was necessary for the protection of the police, and finally, it was necessary for the protection of prison officers.⁴⁶

Replying to the debate, Mr Hanan said: "The arguments in favour of capital punishment can be reduced to two—that we must have the death penalty to make adequate the revulsion of the community for the worst type of murder, and that no other penalty is sufficient. The other argument is that capital punishment does deter people from committing murder."

Answering the first argument, Mr Hanan said that for the law to encourage and embody revenge was, in his view, "unbecoming to us as reasonable men". As for the deterrent value of the death penalty, he argued that many murderers were indifferent to death, as was shown by the high proportion of murderers who committed suicide. Many murderers were insane or mentally unbalanced, either generally, or at the time they committed the offence. Other murderers, the third class, did not think of the consequences—the relation between their act and the future consequences was not present in their minds. Capital punishment could not be effective with many who committed the worst murders. They were driven by a compulsion which the possibility of future hanging would not overcome. Finally, in some cases the perpetrator of the planned and deliberate murder, of sane brain, was too conceited to fear detection, and was, therefore, uninfluenced by the penalty.

The Minister concluded: "Justice is due to all men, murderers as well as the rest of us, simply because we are men. The situation through the vagaries of party politics in New Zealand for the last 25 years has, therefore, violated justice."⁴⁷

The Crimes Bill, as amended, abolished the death penalty for all classes of murder, and became law. The clause introducing the concept of diminished responsibility was omitted. To implement the Minister's policy for longer prison terms for murderers, the legislation (which formerly provided for cases of murderers to be considered after a period of five years) was amended, and the period extended to 10 years. Henceforth, the convicted murderer would be sentenced to imprisonment for life. ("Hard Labour" had been omitted from legislation some years before.)

⁴⁶*Hansard*, Vol. 328, pp. 2693–2698. In 1961 two policemen were shot in Auckland by a man subsequently found unfit to plead. In 1963 two policemen were shot in Lower Hutt, and in 1965 an armed murderer, with two other inmates, used a prison officer as a hostage in a bid to escape from Auckland Prison. In 1966 a policeman was killed by two escaping remand prisoners in Dunedin.

⁴⁷*Hansard*, Vol. 328, p. 2785. In the course of the debate, the Hon. W. Nash and the Hon. F. Hackett referred to an executed murderer whose guilt was doubted by counsel, by his doctor, and by the clergyman who officiated at the execution. The hanged man's name was not mentioned but the reference was probably to Bolton, executed in 1957.

Although the penalty for murder excludes capital punishment, the permanence of the present law cannot be guaranteed. The alternating attitudes of New Zealand Governments, the inconclusive evidence of statistics, and the intense public reaction to certain types of murder combine to hazard prediction. But the 1961 debate showed that political feeling at that time was running more strongly than ever against hanging.

Whatever the arguments for and against hanging in the public mind, there is little doubt where the murderer stands in any choice between death and life in prison. Although some convicted murderers have not appealed against the death sentence, none in New Zealand has ever appealed against commutation of a death sentence. The remark of murderers "sweating" on a release date—"a man would have been better hanged than go through this"—is never very convincing at that late stage of imprisonment.

EXECUTED MURDERERS

Eight murderers were executed in New Zealand from 1952 to 1957.

Fiori—Before the execution of Fiori, no murderer had been hanged in New Zealand for 18 years. Fiori was hanged in March 1952 for the shooting of a man and his wife while Fiori was in the act of stealing money.

Fiori, as a boy, was seriously maltreated and rejected by his father. His mother was described as weak and neurotic. At the age of six years he was knocked down by a lorry and badly injured, and from this time his conduct seems to have deteriorated. By the age of nine, he was appearing before the Children's Court on charges of truancy, obscene language, and absconding from home. Reports describe him as having a poor physique, and as being listless and lacking any sense of responsibility. He refused to work and stole newspapers, selling one each day to his father. Fiori was eventually placed in the Otekaike School for retarded children.

Eventually he was committed to Borstal for forgery and uttering, and was later imprisoned for theft. After the prison term, he married, and it appeared at first that he had settled down. However, spendthrift ways soon led him into debt and he became in urgent need of money. Fiori knew that his employer had the pay for the camp employees in his home on a certain night. He took a gun and entered the house. When the owner stirred in bed Fiori shot him and his wife and made off with the money. Next day Fiori and his wife quite openly had a spending spree and bought a car. He was arrested, tried, and found guilty. Though he was sentenced to death, he did not appeal.

In his report to the Minister of Justice, the Secretary for Justice said: "Fiori may fairly be described as a borderline feeble-minded person."

Te Rongapatahi—This man had been drinking heavily for about two days to drown his sorrow over an unfaithful girl-friend. She had left

him for his younger brother, and on the day of the murder the rejected lover went in search of her with a loaded gun. He meant to kill her and then commit suicide. He engaged a taxi to help in his search, although he did not have cash to pay the fare.

On the way, for some unknown motive, Te Rongapatahi shot the taxidriver. In his statement to the police, he said, "I don't know why I shot Henderson [the taxidriver], I had no row with him. He never said anything about paying the fare. I never thought about shooting him before I got out of the taxi. I just brought up the rifle and pulled the trigger. I don't know any more than that."

When murderers were sentenced to death the practice was to have them examined by psychiatrists who reported their findings to the Minister of Justice. These reports were intended to help the Executive Council decide whether or not to vary the sentence of death.⁴⁸ In the case of Te Rongapatahi the psychiatrists may have felt that a special factor was present which could justify a variation to life imprisonment. They said: "This lessening of control through alcohol is generally accepted as happening with greater ease in the case of the Maori mind." They did not feel that the family history of insanity constituted a material factor.

Te Rongapatahi was hanged on 14 September 1953 at the age of 24 years.

Whiteland—Whiteland was 59 years of age when he shot a 19-year-old woman—a fellow employee—at Reefton railway station. While on remand in Christchurch Prison, he attempted suicide by jumping from a high balcony.

Whiteland came from India to New Zealand in 1927. His parentage is obscure, but he was dark-skinned and known as "Darkie". He always referred to his father as a drunken, cruel man. Wherever he went "Darkie" was acceptable in the community, especially among children. For over 12 years before the crime, he had suffered from fits which a Christchurch physician and a general practitioner diagnosed as epilepsy. He received regular supplies of medicine to control the condition. He neither smoked nor drank, nor did he seem interested in the opposite sex. He had no previous convictions.

On the day of the murder he flew into a temper over an increased rental of 6d. a week which he felt to be quite unjustified. He then took the gun, and, for no apparent motive, shot the young woman. He had a "fit" on the railway line shortly afterwards.

The defence rested on a plea that he was acting in a psychomotor fit—that he was in a state of automatism and that he was, therefore, within the definition of insanity as laid down in the law.

⁴⁸Some psychiatrists were critical of this duty which they considered to be an abuse of psychiatry.

The State psychiatrists did not agree that Whiteland suffered from true epilepsy and that he was in a state of epileptic automatism at the time of the murder. Their opinions were:

- “(1) There is doubt as to the true nature of his turns, though he regarded himself as an epileptic. They could be epileptic but are more likely due to emotional causes.
- (2) He could not have been in a state of epileptic automatism at the time of the murder.
- (3) He has an unstable personality with diminished emotional control and is likely to react in an exaggerated manner to emotional upsets.
- (4) His intelligence is within normal limits.
- (5) He could not be certified as insane under the Mental Defectives Act 1911.
- (6) At the time of the murder he was aware of what he was doing.
- (7) His attempts at suicide could be interpreted, in the absence of mental disorder, as the only means at his disposal of avoiding his trial.”

Mr Justice McGregor, in his report to the Minister of Justice, pointed to the absence of motive. He also referred to the weaknesses in the defence of automatism:

- “(1) It is practically unknown that an automatic state should last for longer than 30 minutes. Whiteland’s lasted for one and a half hours.
- (2) In an automatic state the acts of the sufferer are usually of an habitual nature.
- (3) The acts of the prisoner during this period many times showed a change of volitional direction.
- (4) The prisoner showed convenient or selective memory—inconsistent with automation.
- (5) It is unknown for an automatic state to precede the epileptic seizure—he had a kind of seizure on the railway line afterwards.”

The Secretary for Justice, reporting to the Minister, made these comments:

- “(1) Whiteland is, and was, legally and medically sane.
- (2) He had a psychiatric disorder which was treated by a reputable physician as epilepsy.
- (3) Irrespective of the precise diagnosis of his trouble, it is undeniable that he had an emotional disorder which gave him a much lower resistance to the minor irritations of life; to which it might be expected he would react—and in this instance did—in an exaggerated fashion.

- (4) As to how far this disability lessened his responsibility for his act, I am not able to assist the Executive Council to determine. The medical advisers are not able to venture an opinion. All that can be said was that there is, and was, a deviation from normal in his make-up."

The Executive Council refused to vary the sentence of death. Whiteland made a will leaving his small estate to be divided amongst certain prison officers and prisoners. He was hanged four days before Christmas, 1953, and his last words were, "A Merry Christmas and a happy New Year to you all".

Eight murderers were convicted before the next hanging took place. Three of those reprieved were the Niue Islanders who had killed the local Commissioner. A woman was found guilty of two murders in Napier. She, too, was reprieved, presumably because of her sex. (The last hanging of a woman had been that of Minnie Dean in 1895.) The next murder was a double homicide in New Plymouth when an 18-year-old lad killed his father, and then rushed into the street and killed a passer-by without any motive. For the first offence he was found guilty of manslaughter and for the second he was found guilty of murder. He, too, was reprieved. The next three murders were committed by juveniles.

In 1955 and 1956 came a series of four murders and four executions. The first murder was committed by Foster, an English immigrant, who shot his girl-friend after she left him. The next was a young Maori, Te Whiu, who killed an elderly woman to get her money. The third, Allwood, killed a friend in order to obtain possession of his car, and the fourth was a young Irishman, Black, who fatally stabbed another man out of vengeance.

Finally at the close of 1956, a 68-year-old farm manager, Bolton, was found guilty of poisoning his wife. She had never been a robust woman, though she had reared six children, and she was inclined to worry about her health because of a series of minor complaints. Her sister's husband died about two years before Mrs Bolton's death, and it appeared that Bolton developed an attachment to the widow. He gave her presents unknown to his wife and there was intimacy between them. Bolton had access to arsenic in a sheep dip preparation, and the prosecution alleged that he had put arsenic in his wife's tea.

The police case stated that the post-mortem examination had revealed very definite arsenical poisoning. The attacks of sickness suffered by the deceased had always occurred when Bolton and his wife were together. Bolton was executed in February 1957.

In the cases of Fiori, Whiteland, Te Whiu, and Te Rongapatahi the decision between death and life must, or should have been, a difficult one. Yet while their cases for purposes of reprieve could have been described as marginal, the ultimate decision suggested an absolute distinction between them and reprieved murderers.

It is, perhaps, worth recording that of the eight men hanged, three were immigrants and two were Maoris. All but one were unskilled labourers.

A prison official has described the prison, the executioners, and the reactions of officers during the years 1955 to 1957:

"My experience of executions is limited to those of Foster, Te Whiu, Allwood, and Black (in 1955) and that of Bolton (in 1957). I was present at the execution of Allwood, and I was with the other men until they received the Last Sacrament before going to the execution yard.

"Before detailing the attitudes, feeling, and reactions surrounding these events in Auckland Prison, there are one or two details which should be recalled from earlier hangings. The correct method of killing by hanging is by fracture of the cervical spine, thus causing a transverse rupture of the spinal cord. This should take place immediately and cause instantaneous death. There is at least one instance in the last 30 years when this did not happen.

"Asphyxiation was Dr Tewsley's finding in the case of W. A. Bayly, executed at Auckland Prison in 1934. The "Meccano Set", as it was euphemistically called in official telegrams, had been moved from Wellington to Auckland. Despite the Superintendent's telegram to Head Office—"Sentence of Court carried out no hitch", there had been a miscalculation resulting in the slow strangulation of Bayly. Dr Tewsley reports that Bayly's pulse was still strong four minutes after the drop.

"The official reaction to this information was that the Controller-General of Prisons wrote to the Superintendent, Auckland Prison, and said, 'Death by strangulation is made much of by anti-capital punishment advocates, and it is desirable that there should be no mistake on the actual cause of death on the Departmental records.'

"Executions cause strange reactions in people. While Bayly was awaiting execution, a female civic leader wrote to the Superintendent of the Prison, 'Being much interested in the study of the hand, I wondered whether it would be possible to obtain an imprint of the hand of William Bayly—condemned for murder. For scientific purposes I would like both hands—but the right's the more important.' The request was refused.

"I took up duty in Auckland Prison a fortnight after the execution of Whiteland. The officiating sheriff at that hanging had taken sick leave the day following the hanging and was to be away for four months.

"It was not until 1955 that the next hanging took place—that of Frederick Foster, who shot his girl-friend because of jealousy. When Foster was found guilty of murder we were confident that the sentence would be commuted to life imprisonment. I came to know Foster well during the time he was in gaol. He was a weak, ineffectual man, deeply attached to his victim, and quite unable to accept the fact that she was dead. He was not the stereotype of a vicious man. From the time of his conviction he was attended by an officer day and night—the common practice with a condemned man. He was weighed daily to prevent his

knowing when the actual day of hanging had arrived. For the condemned man must be weighed on the day of hanging, and a mock-up hanging staged with a sand-filled sack of exactly the same weight.

"Although petitions came flowing in, the days went by and there was no reprieve. A few days before the execution Foster developed an abdominal pain which was diagnosed as appendicitis. With solemn irony, arrangements were made for his transfer to hospital where a successful operation was carried out. He was quickly returned to prison, and hanged before the wound had healed.

"I don't know when sedatives were first used in these situations, but Foster, and the succeeding murderers, were sedated. Despite this, Foster's terror increased each day and night, and he went to the gallows well aware of everything.

"This leads me to comment on the attitudes of the officers taking part in a hanging. (The hangman in my experience did nothing except pull the lever for the drop—all other preparations are carried out by the prison staff.) One or two officers seemed completely unaffected by the whole performance as if their minds had long ago been drained of humanity. But the majority of officers adopted a transparent bravado, or the attitude of having reluctantly to undertake a painful duty. The side effects were interesting. One officer was usually absent for a day or two afterwards. Others developed psycho-somatic disorders. The Superintendent always adopted a show of bravado, but the effect on him was all too apparent as the day of the execution approached. He became, and looked, a lonely and ageing man, carrying a burden that grew heavier as the days passed. It usually took him several weeks to become his old robust self.

"The effect on other members of the staff varied roughly in proportion to their intimacy with the condemned man. For my part, I had spent a lot of time with Foster, and such was the effect of his hanging upon me that I decided rightly or wrongly not to spend so much time with any future prisoner waiting to be hanged.

"Te Whiu followed Foster one month later. He went happily to his death. As came out in evidence, the completely non-adjusted a-social youth had calmly cooked himself a meal in the next room to the corpse of his aged victim. I offered him a cigarette an hour before he was due to be hanged. As he took it, he smiled and said, "Won't it be wonderful to be in heaven where cigarettes can come flying through the air". One of his last requests was to have his religious comics thrown into his grave with him.

"Then came Allwood. The Superintendent had sensed my revulsion at the act of hanging. It may have been for this reason that he asked me to act as host for the Police and J.P.s at Allwood's hanging. I discussed the matter with the Rev. Fr. Downey who had been present at several hangings. He told me that he always felt like getting as far away from the prison as possible when a hanging was to take place. Although I

felt exactly the same, I decided that I should accept the Superintendent's 'challenge' and see hanging for myself. Allwood had shown little fear during his wait, and he maintained this to the end.

"When the time for the hanging came, my own feeling (and I am not talking piously) was one of complete revulsion and rejection of the whole business, and I felt, as I left the yard with Allwood's body still jerking on the rope, that he was the only actor in the drama who came out of it clean.

"Next morning the Superintendent asked me to accompany him to the crematorium where we not only took part in the service, but also went to the cremation chamber. Here the Superintendent insisted that we watch the body burn away—no doubt in case a relic was left.

"After each hanging the white face-cloth covering the head and face was taken home by a senior officer to be washed and ironed for the next hanging.

"Black died bravely and needed only a minimum of sedation.

"Bolton was possibly the most pathetic spectacle of all. To the very end he denied his guilt.

"Each execution was attended by tension which mounted throughout the institution as the day and the hour approached. But it was noticeable to me that the tension was less each time. There seemed to be a growing acceptance amongst the inmate population. The tension and anxiety among those who had to carry it out grew no less, however, and the effect on the Superintendent was cumulative. To myself and some others on the staff, it appeared as if we were participants in an unreal and ghastly drama."

THE MURDERER IN PRISON

The murderer is automatically placed in a maximum security prison, where most of the inmates are hardened recidivists. Two-thirds of the "lifers" have had no previous criminal history, and are, therefore, "out of their element"—different from the large majority of inmates. They are also different in the type of crime they have committed—the taking of a life—the most serious of all offences. Finally, they are different in the type of sentence that has been imposed upon them—a long, indefinite term with a minimum of 10 years.

The three factors make them, in a sense, a group apart. If one can talk in such terms, they are for the most part the aristocracy of the prison community. Their crime and sentence earn them not only sympathy, but also prestige and admiration in a world of perverted values. Regardless of the victim, this is still true, and even the child killer is not always subjected to abuse or hatred from his prison peers.

Generally the murderer takes a year or more to settle down to an acceptance of his sentence. A few never do settle, but most reach a plateau of existence where they accommodate themselves to prison life, realising that a long time must pass before they can contemplate release. Sometimes, by reason of lifer-status and personality factors, a

lifer becomes the gaol "baron". Two such men, in their day, were unchallenged leaders of the prison population, one by physical strength and robust personality, the second by shrewdness and cunning.

It was the custom in the past to make the prolonged prison stay more tolerable by giving lifers certain privileges. For example, they usually had their own radio sets and could choose whatever station suited them, while the rest of the inmates had, willy-nilly, to listen to commercial stations. Lifers were also occasionally allowed a diet of fruit. It often happened that sympathetic prison visitors deliberately chose to visit the convicted murderer. (There is a morbid fascination about these people which draws the interest of the public.)

Lifers also may inherit the "plum" jobs in a prison, such as that of librarian, or school cleaner, or assistant storeman. Finally, because of their long stay, they can become prominent in institution activities—debating, schoolwork and study at university level. One gained four units of his B.A. degree while in prison and outshone most of Auckland's debaters.

Despite a general acceptance of the inevitable, a few lifers in the past found it hard to settle and caused the administration a lot of trouble. Two or three today are following in their footsteps. If the murder is a "normal" one (i.e., not the work of a sexual psychopath or other pervers) then the release date will depend a great deal on behaviour. But release sometimes seems too far away, and frustration, daily discipline, and confinement occasionally cause a breakdown in control.

The lifer, because of his notoriety, is in constant jeopardy from renewed publicity. Murders are prone to be dramatised, as happened some years ago. This kind of publicity for crimes in the recent past opens old wounds, not only in the mind of the murderer, but also among other people involved in the offence.

It was rumoured at the time that one lifer's escape was a desperate reaction to reading an article about himself in an Australian magazine. Since then, three lifers have escaped—one to get away to his native land, another as a gesture of defiance and bravado. The third wanted to draw attention to his own alleged innocence.

The real anguish of the prisoner undergoing a life sentence begins at the tenth or eleventh year when, theoretically, release becomes a possibility. Year after year, once a year, they appear before the Parole Board. Usually, year after year their pleas are rejected, despite good behaviour reports and petitions from friends outside. Optimism alternates with cynicism. Over the years they place their own interpretation on events without any authentic justification. Transfer to another prison is to them a hopeful sign; so also is the absence of a "knock-back" from the Board. Very often silence means that the process of release has indeed begun . . . the Parole Board will have made a favourable recommendation to the Minister. In the past as long as a year or more has gone by before the recommendation has been accepted and before a date can be fixed for release.

Such delays are unfortunate at the close of a long period of punishment. Waiting and working for a "date" means the suspension of most other normal activities—all energy and thoughts are channelled towards release. If hope is long deferred, men do become sick and leave prison embittered and cynical in outlook. Many, for example, see themselves as the victims of politics and believe that no lifer is released in an election year.

Despite any pressures that may be engendered by anticlimax, the statistics show that scarcely any released murderers reoffend. Most make a satisfactory readjustment to the community. Statistically, released murderers are far more innocuous than the hitherto law-abiding husband continually at war with his wife, or the newly-jilted lover whose jealousy is beyond control.

SCOPE FOR REFORM

It is essential, in considering reform, to be reminded that society regards murder as the most serious of all offences. Even to mention reform in the treatment of murderers is to court criticism and rebuke from those who demand the most stringent custodial treatment.

Some regard life imprisonment as being in itself sufficiently severe—incarceration for periods that last from 10 to over 20 years. During the 1961 Crimes Bill debate, the Hon. J. R. Marshall contended that there was certain deterioration in a man serving such a long sentence. If this were true, then society would be condoning the slow destruction of human personalities. Strangely, there is no scientific evidence of such basic deterioration as a result of imprisonment, although moral standards may well approximate to the lowest common denominator of the prison.

The only alternative so far attempted—capital punishment—is, of course, barren of reformation, and appears to have little effect on the incidence of culpable homicide. As retribution, it is the ultimate expression of the *lex talionis*—society's unforgiving revulsion against unjustified killing. Only as an expression of community vengeance can capital punishment be justified. But the evidence adduced in this chapter goes to show the difficulties inherent in choosing who should die and who should be reprieved.

If capital punishment for murder is indeed a thing of the past, we are still left with the problem of men and women serving prolonged, indefinite sentences in prison. It has been said that murderers are, on the whole, good prisoners, and that only a few recalcitrants make the headlines. A few have had previous convictions; but only one, or perhaps two, in the past 25 years have been convicted after release.

The average picture is of persons in a variety of situations killing through anger, jealousy, or greed. These persons, convicted of murder, may lead an average period of 15 years of suspended normality, from which they emerge to a limited freedom for the rest of their lives. Such treatment for murderers has the overwhelming approval of our society.

The question arises: What can be done with these long-term inmates of our maximum security prison? What should be attempted during the seemingly endless years to keep before the murderer the concepts and attitudes of normal free living, so that in due course he will be fit to leave the prison and take his place in society?

The baneful influence of close confinement must somehow be countered, for although there is no evidence of basic personality disintegration, there is a danger that behaviour patterns will be forced into conformity with those of the sophisticated criminals who come and go. A lifer during his sentence of, say, 15 years spent in maximum security meets hundreds of the community's worst criminals. Yet in spite of the persistent impact of their influence upon him, he succeeds usually in retaining non-criminal attitudes.

Where this praiseworthy positive response is evident, it seems unnecessary to expose the lifer further to such anti-social influences, and he might well be housed in a medium or minimum security institution. If it be argued that there is then a greater chance of escaping, it can be countered by the fact that society needs less protection from the average convicted murderer than from the repeating rapist or the inveterate burglar. A careful choice of lifers would ensure that the public would be placed in no jeopardy, even if one of them succeeded in getting away from prison.

As a further effort at rehabilitation, a programme of release-to-work is now commonly set in train when the ultimate release of the lifer is in sight. Only in this way can men who have been out of circulation for many years become accustomed to what to the ordinary citizen are ordinary ways of living. To the lifer they are strange and new.

If family attachments still exist, weekend leave at this stage eases the tensions of ultimate reunion. One murderer in recent times was visited weekly by his wife for 16 years. Most lifers, however, have no enduring domestic ties and have become unused to the social behaviour and graces associated with normal life. Such acts are gradually renewed by weekend leave and similar periods of freedom.

Even in a maximum security prison, when his behaviour warrants it, the lifer usually has a little more freedom and independence than the ordinary prisoner. He may, for example, be allowed to decorate his cell to make it appear less forbidding and more homely. When well-behaved lifers are placed in less secure conditions, the humanising process is extended as release approaches.

At the Second United Nations Conference on the Prevention of Crime and the Treatment of Offenders the following pre-release programmes were mentioned:

- (1) Information sessions on matters which will be important to the offender on his return to the community, such as parole conditions and employment opportunities.

- (2) The granting of greater freedom in the institution which may take the form of:
- (i) Letting the offender shed his prisoner's garb and wear his own clothes;
 - (ii) Lodging him in separate quarters of the prison;
 - (iii) Giving him an opportunity to determine his leisure activities and communicate more freely with the outside world, and generally subjecting him to less supervision.⁴⁹

These suggestions were not specifically put forward for lifers. But if they are deemed necessary for ordinary prisoners, they should *a fortiori* be applied to those who spend 10 to 20 of their adult years in prison.

⁴⁹Report prepared by the Secretariat: Page 3.

APPENDICES

APPENDIX A

Charges of Murder and Attempted Murder 1960-1964

Sex	Age	Charge	Verdict	Sentence	Victim	Apparent Motive	Method
1960							
M	24	Murder	Not guilty on ground of insanity	Death (commuted to life imprisonment)	Woman	Drunken quarrel	Physical violence
M	18	Murder	Guilty Rec. to mercy				
F	42	Att. murder	Not guilty on ground of insanity				
		Att. suicide	insanity				
M	18	Murder	Manslaughter	5 years	Man	Fear	Gun
M	41	Att. murder	Guilty	5 months and 1 year probation	Wife	Psychiatric case	Knife
		Wounding					
M	31	Att. murder	Guilty Rec. to mercy	4 years	Wife	Provocation	Knife
		Wounding					
M	38	Murder	Unfit to plead				

1961

M	27	Att. Murder	Assault causing actual bodily harm	2 months and 1 year probation	Wife	Quarrel	Strangulation
M	17	Murder	Guilty	Detained during H.M.'s pleasure	Man	Quarrel	Knife
M	48	Att. murder	Wounding	3 years imprisonment	Woman	Gain	Knife
M	29	Att. murder Wounding	Guilty Rec. to mercy	3 years imprisonment	Friend	Quarrel	Knife
M	19	Murder	Not guilty on ground of insanity		Wife		
M	31	Murder	Manslaughter	5 years	Child	Cruelty	Physical violence
M	38	Murder	Guilty	Death (commuted to life imprisonment)	De facto wife	Jealousy	Knife
M	30	Att. murder	Assault causing actual bodily harm	15 months	Lover	Vengeance	Dagger
M	26	Att. murder Wounding	Stay of proceedings	2 years	Fiancee	Jealousy	Knife
F	39	Murder	Not guilty on ground of insanity				

1962

M	27	Murder (2)	Unfit to plead	Life imprisonment	Girl-friend	Jealousy	Gun
M	28	Murder	Guilty	Life imprisonment	Neighbour	Provocation	Gun
M	50	Murder	Guilty Rec. to mercy	Life imprisonment	Workmate	Quarrel	"Slasher"
M	33	Murder	Not guilty on ground of insanity				
M	..	Murder	Unfit to plead				
M	35	Murder	Manslaughter	10 years	Wife	Jealousy	Knife
M	46	Att. murder Wounding	Not guilty	2 years and 9 months	Daughter	Jealousy	Knife
M	37	Murder	Not guilty on ground of insanity				

APPENDIX A—continued

Charges of Murder and Attempted Murder 1960-1964—continued

Sex	Age	Charge	Verdict	Sentence	Victim	Apparent Motive	Method
1963							
	27	Murder (2)	Guilty	Life	Police	Resentment	Gun
	M	Att. murder	Guilty	10 years	Child	Sex	Physical violence
	30	Wounding	Manslaughter	4 years	Husband	Resentment	Gun
	M	Murder	Manslaughter	5 years	Girl	Sex	Poison
	M	Murder	Guilty	Life	Acquaintance	Drunken episode	Gun
1964	44	Murder	Not guilty on ground of insanity				
	31	Murder	Guilty	Life	Criminal associates	Revenge	Gun
	M						
	31	Murder	Guilty	Life	Criminal associates	Revenge	Gun
	45	Murder	Manslaughter	7 years	Wife	Quarrel	Physical violence
	M						
	32	Murder	Manslaughter	8 years	Wife	Jealousy	Gun
	M						
	30	Murder	Guilty	Life	Taxi-driver	Jealousy	Strangulation
	22	Murder	Guilty	Life	Girl-friend	Jealousy	Physical violence
	25	Murder	Manslaughter	6 years	Child	Cruelty	Physical violence
	M						
	24	Murder	Manslaughter	5 years			
	F						
	58	Att. murder	Injuring with intent	3 years			
	M						
	22	Murder	Not guilty on ground of insanity				
	25	Att. murder	Acquitted on grounds of insanity				
	27	Murder	Not guilty on ground of insanity				
	47	Att. murder	Not guilty	18 months	Former lover	Jealousy	Knife
		Wounding	Guilty				

NOTE.—There were two murder convictions in 1965 (1 female) and 6 murder convictions in 1966 (1 female).

APPENDIX B

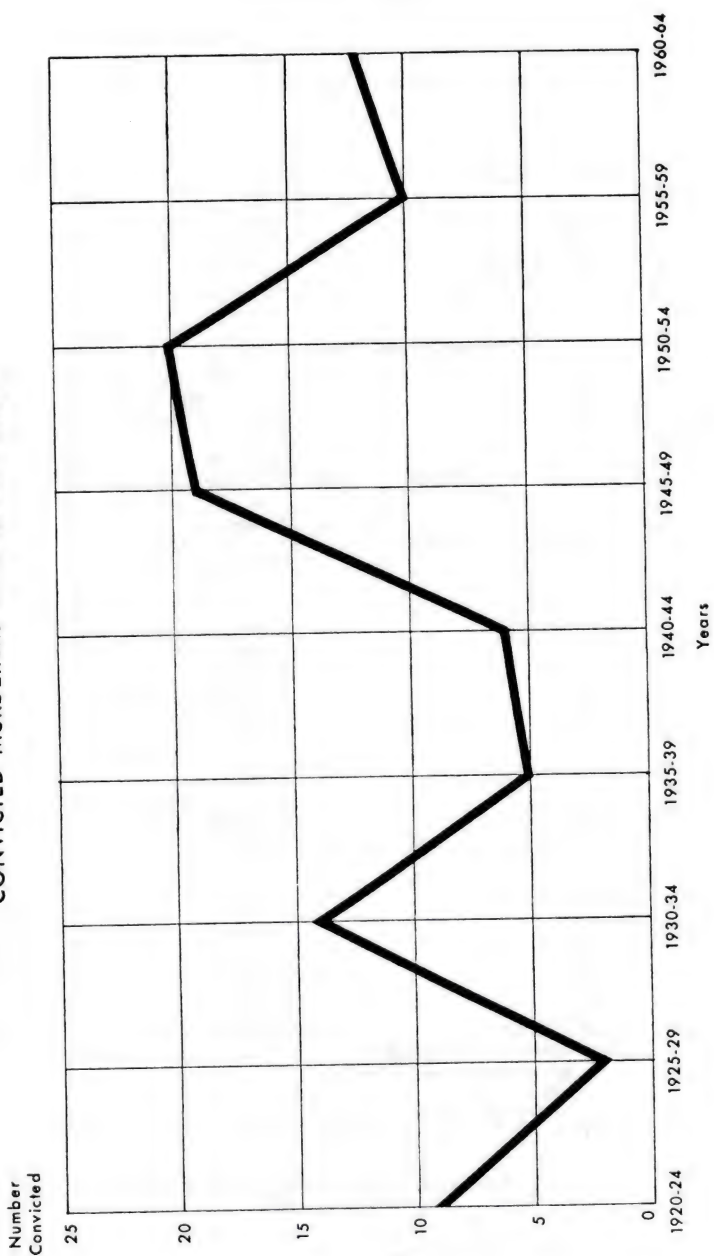
Persons Charged with Manslaughter 1960-1964

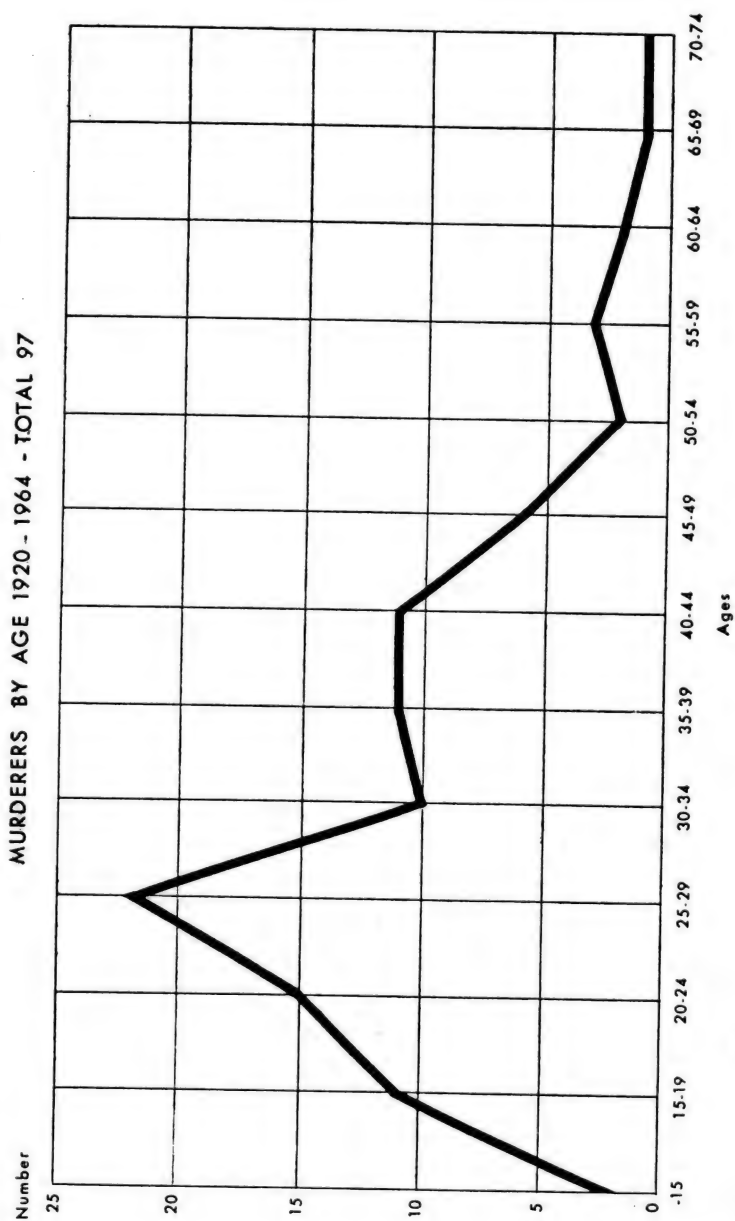
Sex	Age	Verdict	Sentence	Victim
1960				
M	21	Guilty (mercy)	Fined £100	Traffic*
M	26	Assault	Fined £50	
M	16	Guilty	3 years probation	Traffic*
M	26	Guilty (mercy)	6 months	Man
M	25	Guilty (mercy)	4 years	Man
M	44	Guilty (2 charges)	5 years	Traffic*
1961				
M	{ 30	Guilty of failing to provide neces-	3 months	
F	{ 22	saries of life	3 months	Child
F	24	Guilty (mercy)	3 years probation	Child
M	33	Guilty	1 year probation	Adult
M	{ 27	Guilty	6 years	Child
F	{ 27		6 months	
F	23	Assault and illegally beating child	6 months and 1 year probation	Child
M	18	Guilty	Suspended	Traffic*
M	{ 28	Guilty exposing infant	4 years and	Child
F	{ 22		6 months	
1962				
F	26	Infanticide	4 months and 12 months probation	
M	31	Assault	4 months	
F	23	Guilty	6 months and 12 months probation	Child
1963				
M	43	Assault	11 years	Female
M	41	Guilty	4 years	Child
F	21	Guilty	6 months and 12 months probation	Child
1964				
M	25	Guilty	2 years	Adult
M	23	Guilty	9 months	Adult
F	17	Guilty	2½ years	Child
M	{ 23	Guilty	4½ years	Child
F	{ 21		9 months	
F	27	Guilty	2 years	Child
F	28	Guilty (mercy)	9 months	Child
M	16	Discharged under section 42		
F	30	Not guilty by reason of temp. insanity		
M	22	Neglect to provide necessities of life	9 months and 12 months probation	Child

NOTE—There were eight manslaughter convictions in 1965 and seven manslaughter convictions in 1966.

*These were victims of traffic offences.

CONVICTED MURDERERS IN 5-YEARS PERIODS





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Chapter 3

SUICIDE AND ATTEMPTED SUICIDE

The relationship between murder and suicide (self-murder) has been widely discussed in recent years. A brief study of suicide is, therefore, appropriate at this stage, with particular reference to New Zealand suicide over a 25-year period. This is followed by a brief local study of attempted suicide.

An estimate of the incidence of suicide in New Zealand and of the methods used is gained by studying three years—1940, 1952, and 1964. In 1940 there were 168 suicides in a population of almost 1,250,000 people aged 15 years and over. This approximates to 14 suicides per 100,000 people. The methods used were:

1940				
Method			Males	Females
Poisons	..	..	11	10
Hanging	..	..	17	1
Firearms	..	..	47	3
Drowning	..	..	11	5
Gas	..	..	25	11
Cutting or piercing	..	..	16	4
Jumping	..	..	1	1
Crushing	..	..	1	1
Other and unspecified	..	..	3	..
			132	36

The year 1952 presents a broadly similar picture, with 189 suicides in a population of approximately 1,400,000 persons aged 15 and over, or 13.5 per 100,000:

NOTE—The Department of Justice is indebted to the Health and Police Departments for their co-operation in this study, and to the Superintendent-in-Chief of the Wellington Public Hospital.

1952

Method	Males	Females
*Analgesic and soporific substances	7	5
Other solid and liquid substances	6	7
Gases in domestic use ..	21	10
Other gases	8	1
Hanging and strangling ..	23	5
Submersion (drowning) ..	15	10
Firearms and explosives ..	46	3
Cutting and piercing instruments	12	1
Jumping from a high place ..	2	3
Other and unspecified ..	1	3
	141	48

*Classification was changed in 1950.

In 1964, 207 persons committed suicide out of an estimated population of 1,750,000 people aged 15 and over—about 12 persons per 100,000:

1964

Method	Males	Females
Analgesic and soporific substances	19	36
Other solid and liquid substances	5	12
Gases in domestic use ..	5	5
Other gases	15	2
Hanging and strangulation ..	19	6
Submersion	5	10
Firearms and explosives ..	45	5
Cutting and piercing instruments	7	2
Jumping from a high place ..	5	1
Other and unspecified ..	2	1
	127	80

The most noteworthy point about the 1964 table is the increased use of analgesic or soporific substances. The figures for these substances are:

¹ Year	Males	Females
1960	5	2
1961	9	9
1962	8	21
1963	28	34
1964	19	36

¹In 1966, 245 persons committed suicide, 56 by analgesic or soporific substances.

In the adolescent group (under 20 years) there has been a decrease in suicides over the past 25 years. The five-year totals from 1940-1964 are: 27, 28, 24, 25, and 23. Of the total of 127 persons, 80 percent were males. Thirteen were children under the age of 15 years.

The method of suicide of the adolescent group of 127 is as follows:

Method	Males	Females
Poisons (solid and liquid poisons, analgesic and other liquid substances) ..	12	11
Hanging or strangling ..	30	4
Firearms	51	4
Drowning	3	2
Poisonous gas	3	2
Jumping .. ..	..	1
Crushing .. ..	..	1
Other	3	..
	102	25

Suicide has been defined as a fatal act of self-injury undertaken with conscious, self-destructive intent. As homicide is a thought most people harbour at some time, so there seem to be few to whom the idea of suicide has never occurred. Some psychiatrists argue that a self-destructive drive exists at a conscious, or unconscious, level at some stage in every person. With suicide, as with homicide, comparatively few people go beyond the thought (and most are never consciously aware that such an urge exists).

A recent report by the World Health Organisation gives the suicide rates per 100,000 in 25 countries over a 10-year period. The rates are suspect for many reasons, but it can reasonably be deduced that the countries with a high standard of living have comparatively high suicide rates.²

For the purpose of this particular study we are concerned with New Zealand figures related not to the total population, but to the age-groups in which suicides mainly occur—15 years and upwards. Thirteen cases of suicides under the age of 15 occurred during the last 25 years, but this figure scarcely justifies including the 10 to 15 year age-group as one in which suicide is mathematically relevant.

Because the number of New Zealand suicides is not related to the total population but to the relevant age-groups, the New Zealand rates given in this study are higher than those in the WHO report. The rates are also related to sex to discover whether significant patterns emerge in relation to male and female suicide and attempted suicide.

²Cf. table, page 113.

Information about suicides in New Zealand is limited to the evidence recorded in inquest files. This evidence is minimal and, apart from the pathologist's report, few facts are given. In some cases the age of the person is omitted and seldom is any personal background or case history supplied. Fortunately the Research Division of the Department of Health, by combining the Coroners' evidence with the Department's morbidity records, gives the ages of suicide victims.

Stengel and others have shown that studies of suicide and attempted suicide show very dissimilar patterns in age, sex, method, and motivation. But many who complete the suicidal act have previously attempted, or threatened suicide. The two studies are, therefore, separate in a superficial sense, although many cases include both activities, and almost all cases may well constitute an indivisible field of study. There are also many inconclusive cases of suicide and attempted suicide. And as Dr Medlicott has said, there are many cases of both which go unreported.³ Our figures, therefore, as in every other type of acting out behaviour, are minimal.

CRIMES OF VIOLENCE AND SUICIDE

In a study of 599 criminal homicides, Wolfgang found that 26 percent were akin to suicide, for the victims had clearly provoked other persons to kill them. Warnings and signals of the potentially murderous partner that a homicidal impulse was being evoked, were ignored by the victim.⁴

Examining New Zealand cases, one might cite a few murder cases as akin to suicide. But caution is needed in attributing unconscious motivations unless they have, in fact, been elicited or brought to the surface. Provocation may amount to "asking for it", but how far provocation is suicidal must be left to the psychiatrist.

THE LAW

The Crimes Act 1961 omitted attempted suicide as an offence. But s. 41 provides for the prevention of suicide: "Prevention of suicide or certain offences—Everyone is justified in using such force as may be reasonably necessary in order to prevent the commission of suicide, or the commission of an offence which would be likely to cause immediate and serious injury to the person or property of anyone, or in order to prevent any act being done which he believes, on reasonable grounds, could, if committed, amount to suicide or to any such offence." The abolition of the crime of attempted suicide was contemplated in the Health Amendment Act 1960, s. 6:

"Persons attempting to commit suicide—The principal Act is hereby amended by inserting, after Section 126, the following new section:

³Unpublished report on world tour, 1965.

⁴Wolfgang, M. E., 1959. *Suicide by means of victim-precipitated homicide*, Journal of Clin. Exp. Psychopath. 20.335.

126. (1) Where any person has attempted to commit suicide, a Magistrate's Court presided over by a Magistrate may, on the complaint of any constable or any other person, make an order—

- (a) Committing the defendant to any hospital or institution under the control of a Hospital Board, or to any other suitable place, for such period, not exceeding three months, as the Court thinks necessary; or
- (b) Placing the defendant under the supervision of any relative or of any other person, including any Medical Officer of Health or any probation officer, for any such period as aforesaid."

The penalty for aiding and abetting suicide is up to 14 years imprisonment. Everyone who, in pursuance of a suicide pact, kills any other person is guilty of manslaughter and not of murder. Any survivor of a suicide pact in which one or more persons is killed is guilty of aiding and abetting suicide and can be sentenced to imprisonment for up to five years.

COMPARATIVE STATISTICS

New Zealand was ninth in the ascending suicide rate of 28 countries in 1961.⁵ (Four of these countries gave 1960 figures, but it is unlikely that the 1961 figures would change New Zealand's position.) Canada, Israel, Italy, Netherlands, Eire, Northern Ireland, Scotland and South African non-Europeans recorded lower rates than New Zealand.

It is tempting to speculate on the factors governing the incidence of suicide by comparing these countries with, say, Austria, West Berlin and Sweden, where rates are high. Religion, economic and social mobility, urbanisation, and a complex of other factors come to mind. If Stengel⁶ is right in saying that a firmly structured and rigid society has good rescue procedures and a low suicide rate, one would surely expect fewer suicides at least in Denmark and Finland.

Perhaps the settled community, by its very nature, leads to greater risk-taking, especially among young people. The game of "chicken", popular some years ago, was an example of risk-taking from which injuries and sometimes death resulted. In this kind of gamble the result is left to "fate" or "luck". The sexual pervert who indulges in symbolic hanging takes a similar risk, which may be a necessary part of the excitement. Two cases, one in 1964 and one in 1967, ended in death by strangulation. Guilt attached to the sexual act may make suicide desirable.

Adults enter into the risk field chiefly through the medium of alcohol and drugs. The reduction of inhibition, along with the growth of self-dramatisation, (e.g., Walter Mitty-ism), may lead to accidents and suicidal acts. Some traffic accidents probably come within the vague

⁵See WHO figures, p. 113.

⁶Stengel, E., *Suicide and Social Isolation* 20th Century, Summer 1964

border of this alcohol-risk-taking-suicide area.⁷ A settled community, leaving little room for enterprise and adventure, may stimulate such activity.

In any community, personal emotions are the most important motivating forces. The appeal for love, the cry for help, the act of vengeance and abandonment stem from areas of emotional pressure over which social structure and economic conditions have little control.

ATTITUDES TO SUICIDE

Although suicide and attempted suicide are no longer criminal acts, suicide is still unacceptable as a "way out". It is regarded with particular hostility as a method of avoiding justice. The discovery of the drowned body of a man, believed to have been associated with the disappearance of a New Zealand girl in 1961, roused feelings of frustrated anger in the minds of many who would rather he had been punished by society than allowed the "easy way out" of self-destruction.

Families in a position to do so, tend to "hide" the suicide or attempted suicide, and those who attempt suicide and who are treated in hospital may tend towards the lower social and economic levels of society. The relatives of all cases, except where there are clear psychotic symptoms, feel a degree of guilt and self-reproach.

MOTIVATION

Behind the act of suicide there are many motives. For example, concealed aggression against another, which for some reason cannot be expressed externally, is directed against the person himself. It is "internalised" and finds expression in self-killing. Reiwald concludes from this: "It is always a question of murder, whether directed internally or externally and, therefore, the step from murder to suicide is by no means so large as we often assume."⁸

Freud makes the same point. A destructive angry drive directed at another is withdrawn on to the self as a substitute for that other person. Only then is suicide committed. The individual who was originally the object of love and hate—the parent—may still be alive, but other people may symbolically stand in lieu of the parent—husband, wife, lover, or friend.

Suicide is believed to be an attempt at expiation, involving a self-directed rage as a reaction to frustrated dependency. It may also be a means of retaliatory abandonment.⁹

An example of such retaliation is found in the following case:

A widow of 60 lived in a *de facto* relationship with a widower. The relationship was unhappy and the widower eventually left. He returned

⁷Selzer and Payne: *Automobile accidents, suicide, and unconscious motivation*, A.M.J. 1962, 119/3.

⁸Reiwald, P., *Society and its Criminals*. p. 158, Heinemann.

⁹Williamson, Barbara. Justice Department. Unpublished paper.

three or four years later, but again left because of the *de facto* wife's alcoholism, bad language, and assaults. His second leaving took place some weeks before her suicide. During those weeks she visited his lodgings to abuse him.

In a suicide note she said: "I have had enough. Since living with him over 20 years he has got me down to his level. I have lost my self-respect. He has left me for better things, such as driving around in another woman's big car and I believe plenty of money. He has not payed any of his bills since he met her. I can't do it. My health has gone, and if I go to see him he just calls the Police. So I wish him well. Please ask Mrs D. to get my cat put to sleep." She committed suicide by carbon monoxide poisoning.

THEORIES OF SUICIDE

According to Jung, the suicidal drive involves unconscious longings for spiritual rebirth. Death is the death of the ego which has lost contact with the self and must return to the womb to be reborn a united being. But this archetypal force results in self-destruction rather than rebirth.

Suicide occurs when life has no meaning, when the ego is enveloped by conflict, when resentment reaches murderous proportions and suicide prevents the murder. Such undertones can be detected in the suicide note of a woman separated from her husband and living in lodging houses.

The note was written to her husband: "Intended to put myself in the Wolfe Home again, but I know I cannot face it, or be a drag on the kids, as the old girl was on me. If I had any family to help, I might have been alright, but I don't think one ever recovers from a breakdown, unless one has help, someone to depend on . . . Be a good father to them, the young ones are more important than us." As Fenichel says,¹⁰ suicide is an accusatory demonstration of misery to coerce forgiveness—"Look what you've done to me; now you have to be good again."

Don Jacobson¹¹ believes suicide to be the result of the combination of conditioned personality and triggering external stress, with different resistances to stress. Suicide is an escape from an unbearable situation, that is, the loss of love and, therefore, hate of those seen to be denying the individual. But hateful and aggressive feelings are internalised, directed against the self. The individual's self-punishment is an attempt to gain love—"Can't you see I will do anything—even die—if you will only love me!"

Suicides may have problems of dependence and hostility that arise from childhood difficulties involving rejection by parents. A 17-year-old girl died of an overdose of barbiturates. Her parents were divorced, and she had been living with her mother. She wrote to her father telling

¹⁰Fenichel, O., *The Psycho-analytic Theory of Neurosis*, London. Routledge and Kegan Paul, 1946.

¹¹Jacobson D., *Scientific American*. Nov. 1954.

him of disagreement between her mother and herself. (She had been placed in the care of the Child Welfare Division for "unstable behaviour".) She came to live with her father who enrolled her at a technical college, but she spent her days in coffee bars. On the day before her suicide he threatened to return her to her mother. Her father described her as "deep" and easily depressed.

There was an unconscious sense of power in the feeling that suicide would make the parents realise how they maltreated the victim. In this context Dr Ironside gives an apposite quotation:

"When shall I be dead and rid
Of the wrong my father did?
How long, how long, till spade and hearse
Put to sleep my mother's curse?"¹²

Childhood environments in which aggressive actions or threats of aggression are a predominant feature of parental behaviour are favourable backgrounds for suicide. The death of a parent in childhood or adolescence has a highly significant correlation.

In an article on thanatophilia in students and other young men, Winnick¹³ points out that, emotionally, death is not regarded as something to fear, but rather as a splendid opportunity to be rid of present difficulties. Behind this, an unconscious fantasy is manifested, which gives rise to a feeling of immortality of an archaic nature in the recourse to death. Suffering and death can be accepted narcissistically and for the sake of the ego. A cruel and demanding super-ego can lead to severe inner tensions, in which a masochistic thanatophile tendency, even in childhood, leads to suicidal notions as reactions to failure.

In a sense, the contemplation of suicide is a compensation. A 20-year-old student noted Fedden's comments¹⁴ on suicide: "Suicide shows a contempt for society. It is rude. As Kant says, it is an insult to humanity—oneself. This most individualistic of all actions disturbs society profoundly. Seeing a man who appears not to care for the things which it prizes, society is compelled to question all it has thought desirable. The things which make its own life worth living, the suicide boldly jettisons. Society is troubled and its natural and nervous reaction is to condemn the suicide." The thought of society's discomfiture comforted this young man who found the stresses of life and study too great to bear.

Frequently in suicides there is a visual fantasy—presenting the patient as dead, having succeeded in his suicidal attempt, yet very much alive, the centre of attention, able to punish sadistically, or even destroy a lost person. In addition, this image seems to produce a state where the

¹²Housman, A. E., *Collected Poems*, The Penguin Poets, 1956.

¹³Winnick, H. Z., *Thanatophilia*. *Psyche*. (Heidelberg.) 1962. 15/11.

¹⁴Fedden, R., *Suicide*. London. 1938.

patient feels completely vindicated for his actions, and obtains advance gratification or imagines acts he could not have contemplated while he was alive.

Menninger in *Man Against Himself*¹⁵ distinguishes three elements in suicide: (1) a wish to kill; (2) a wish to be killed; (3) a wish to die. There is a fourth element: a belief that the victim will continue to exist in some manner or other.

MURDER AND SUICIDE

Taking someone else along into death—extended suicide or murder and suicide, reveals itself in many forms and results from extreme hostility or delusional experiences. It takes place as a general rule in two opposite, or ambivalently coupled, fields—hatred and love.¹⁶ In addition to committing suicide, melancholics and depressives also take someone along into death for revenge, fear, or relief. Schizophrenics interchange suicide and murder and commit what they regard as defensive murder. But they do not always solve the problem situation in this way and often commit suicide after disposing of the “enemy”.

Motivations allied to delusions, hostility, and jealousy lay behind the suicide of a man who, as well as taking his own life, killed his four young children. The final act of vengeance was timed for the exact moment his wife came up the path to her home.

Sifneos and McCourt¹⁷ ask why some persons, angry at someone else, do not express their hostility directly, but choose, instead, to injure or kill themselves—to turn their hostility inward. One possible explanation is that it is important for the person bent on suicide to know that his enemy will suffer through his death—especially if he takes persons important to his enemy with him into death.

On the other hand, *attempted* suicide is a positive act in that the patient is willing to endanger his life to keep alive an emotionally important person, without whom life would be impossible. One patient said: “I’d be nothing without my wife. I could not live without her.” It would be inconceivable to kill a person so important—a fate worse than death.

It is possible that the suicide views himself as just as vitally essential to this person as the other person is to him. What would be worse punishment for such a person than removing himself for ever? The state of mind producing suicide is associated with a melange of wishes for life and for death, resulting from progressively unsuccessful attempts to overcome painful feelings arising from personal relations. These painful feelings are mainly hostile, and may be expressed in the removal of the love-hate object as well as the self.

¹⁵Menninger, K., *Man Against Himself*. N.Y., Harcourt Brace, and World, 1938.

¹⁶Schipkowensky, N., *Psychiat., Neurol., Med. Psychol.* (1pz) 1963. 15/6-7.

¹⁷*Mental Hygiene*. Oct. 1962.

In the psychopathology of suicide, the Adler-Horney school holds that the bases of suicide are hopelessness, suffering, alienation, and the search for glory. An impulse of self-hatred in a framework of severe alienation may initiate suicidal behaviour. There is a slow suicide when the self is gradually degraded—some alcoholism is described as such. In a hopelessly suffering person, suicide may be a means of preserving the self, preventing disintegration.

Although Durkheim¹⁸ regarded suicide as a highly personal act he believed it to be explicable only by including the social milieu of the individual. Factors present in society are highly correlated with suicide rates. He suggested that there were three types of suicide:

(1) *Egoistic suicide* resulting from insufficient integration of the personality into family life or society. Hence there is less immunity against the suicidal impulse. This heading includes all suicides due to physical and mental illness, and those deprived and bereaved. Such a classification is open to the criticism that it is much too generalised and that in many such cases there is less egoism than complete abandonment.

(2) *Altruistic suicide*. This is found when the ego is blended with something outside itself. The suicide may take place because of a higher commandment. The old and the sick want to relieve society of their burdensome existence. Women follow husbands into death. Buddhists in Saigon set fire to themselves. Out of altruism the Christian martyrs went to their deaths.

(3) *Anomic suicide*. Society fails to control and regulate behaviour, or previous regulations are removed—this results in anomie.¹⁹ A decline in religious beliefs, and excessive relaxation of professional and marital codes, are manifestations. Financial crises, such as the Wall Street slump, led to a high suicide rate not merely because of financial loss but also because a crisis existed.

Most theories contain some or all of the psychodynamics listed by Hendin in 1963.²⁰ He equated death in his suicidal patients with at least seven meanings:

- (1) Complete abandonment—alcoholics, neurotics.
- (2) Omnipotent mastery—student (supra).
- (3) Retroflected murder—"I don't love you, but please look after my babies. Don't let them hurt—as they hurt me. God forgive you New Zealander. Your spite could kill a new born child."
- (4) Reunion with a loved one—widows and widowers.
- (5) Rebirth—sometimes linked with religion.
- (6) Atonement—unfaithful husbands, pregnant girls.
- (7) A conviction that one's self is already dead, especially in isolated old people who feel rejected.

¹⁸Durkheim, *Suicide*. Free Press, Glencoe, III.

¹⁹Anomie is a sociological term used to describe a condition in which there are no norms or rules of conduct to guide individual or collective behaviour.

²⁰Journal of Nervous and Mental Diseases, 136, 236. Quoted by Ironside, W. N.Z.M.J., Vol. 63/388, Dec. 1964.

From the numerous studies carried out on suicide, Stengel concludes that suicide rates are positively correlated with:

Male sex	High standards of living
Increasing age	Economic crisis
Widowhood	Alcohol consumption
Single and divorced states	History of broken home in childhood
Childlessness	Mental disorder
High density of population	Physical illness
Residence in big towns	

Suicide rates are inversely correlated with:

Female sex	Number of children
Low population density	Membership of lower social and economic classes
Rural occupation	War
Religious devoutness	
Maimed state	

RATIONALISATION

As the suicidal drive develops, there is often mobilisation of depressive affect²¹ which in turn seeks to rationalise its discomfort in, for example, fear of disease. Many New Zealand cases mention the fear of cancer. Sometimes this artifice results in the subject seeking help, although the seeking may be a mere gambit to prove to the self how barren is all human aid. This may explain why some suicidal persons, as Dr Ironside points out, visit their doctor or their "support" shortly before committing suicide, even if the autopsy shows no evidence of disease.²²

Another defence against underlying depression is the projective process of paranoid thinking in which recriminations are directed at a person or persons, sometimes quite remote from the patient. A divine symbol is sometimes used.

A young man of 20 was found dead near a chapel altar with a note saying: "They say that suicide as an escape from suffering is wrong because it is God who makes us suffer for our salvation. But may not the most sadistic God be satisfied if he has succeeded in driving a man to suicide."

SUICIDE IN NEW ZEALAND

New Zealand is a bi-racial country and any sociological study is concerned with each race and its impact on the other. Disagreement is common amongst sociologists on the incidence of suicide among primitive people, even where culture is not disrupted by westernisation or other foreign influence. Some believe that suicide among primitive

²¹Affect is a psychological term, defined as "any kind of feeling or emotion attached to ideas or idea-complexes". See *A Dictionary of Psychology*, James Drever, Penguin 1952. This noun is not to be confused with the transitive verb meaning "produce effect on".

²²Ironside, W. *supra*.

cultures is rare because of family grouping, the relative absence of feelings of isolation, a low level of social and economic competition, and a general tolerance of failure.

Where two cultures interact, it may be expected that social disintegration, anomie, or domination will influence the suicide rate, as well as the crime rate. A study of the New Zealand situation has not yet been attempted but reference is made later to a study on occupational prestige and social mobility of suicides in New Zealand.²³

A study of attitudes towards suicide among a female Borstal population was carried out by a psychologist at Arohata.²⁴ The sample consisted of a group of 25 Maori girls serving a maximum of two years Borstal training and a group of 25 non-Maori girls serving the same sentence. The Maoris were defined as those who identified themselves with the Maori race and who seemed to have more than half Maori blood (their own statements were checked with records).

The test measured the degree in which each of 48 moral types of behaviour was judged good or bad. Each item of behaviour was printed on a small card. The subject had to place the card on a board marked as below,²⁵ according to how good or bad they thought the behaviour to be. A measuring stick numbered from -10 to +10 was superimposed on the board after the placement of the cards by the subjects, in such a way that the end and midpoints of the rod coincided with the three labelled points on the board, and the reading for each of the 48 cards was recorded. In this way the subjects were not exposed to a numerical scale.

The Maori group (mean -8.08) rated suicide much more severely than did the European group (mean -5.52). The difference between these means was highly significant.

The rank order of the two samples was:

Maori			Non-Maori		
Killing a child	..	-9.56	Killing a child	..	-9.72
Mercy killing	..	-8.76	Kidnapping	..	-8.44
Rape	..	-8.08	Abortion	..	-8.44
Suicide	..	-8.08	Rape	..	-8.44
Intercourse with a			Mercy killing	..	-8.00
girl under 13	..	-7.88	Abandoning a child		-7.88
Kidnapping	..	-7.84	Incest	..	-7.84
Incest	..	-7.80	Cruelty to a child		-7.84
Abortion	..	-7.54	Rejection of a child		-7.76
Cruelty to a child	..	-7.44	Prostitution	..	-7.00
Abandoning a child		-7.16	Indecent acts be-		
War	..	-6.96	tween a woman		
Bigamy	..	-6.44	and a girl	..	-6.80
Adultery	..	-6.44	Indecent assault	..	-6.72

²³Page 101.

²⁴Christie, L., Unpublished study. Justice Department.

²⁵Page 96.

Maori		Non-Maori	
Prostitution ..	-6.12	Brothel keeping ..	-6.72
etc. . . .		Intercourse with a girl under 13 ..	-6.68
		Adultery ..	-5.92
		War ..	-5.84
		Homosexuality ..	-5.52
		Suicide ..	-5.52
		Unintentional murder ..	-5.40
		Bigamy ..	-5.20
		etc. . . .	

BOARD

Measuring Stick

Behaviour which I think is bad or awful	The worst and most awful behaviour I can think of		-10
	(Maori Suicide mean 8.08)		-9
			X — -8
			-7
	(Non-Maori Suicide mean 5.52)		X — -6
			-5
			-4
			-3
			-2
	The least bad and awful behaviour I can think of		-1
Not bad or awful but very good and what I would want			0
Behaviour which seems good to me and the kind I would want	Good but not very good behaviour		+1
			+2
			+3
			+4
			+5
			+6
			+7
			+8
			+9
	The best behaviour I can think of and what I would want		+10

SPECIFIC FACTORS IN 200 NEW ZEALAND SUICIDES

(From the indefinite data contained in the files it appears that there were at least four or five Maoris amongst the 200 cases studied.)

Seasonal Fluctuation: There was no indication of significant seasonal fluctuation in the suicides under consideration.

Loneliness: In 11 cases loneliness or, perhaps more accurately aloneness, was a major factor. A divorcee, aged 67, was found drowned four days after her disappearance. She had previously taken excessive doses of tablets and had persistent stomach ailments. The suicide note to friends read: "My dear . . . , I am sorry it has to be this way. You have done your best. I am just a no good dead loss. Divide the things I have left as you see fit. There is absolutely no blame on you at all. Attached is what is of use to me." Attached was £14. In this note are signs of isolation and hostility turned inward.

A married woman, aged 57, who lived alone, had for some time suffered from insomnia, arthritis, and obesity. Her body was found some months after she had been reported missing. She was described as depressive and she had frequently said she had nothing left to live for since her children had grown up. At the time of her death she owed £50 in rent.

A widow of 70 became depressed following her husband's death. She was due to enter Hanmer Springs Hospital following remarks that she had nothing to live for and would do away with herself by walking into the sea. She died of anoxia of uncertain cause.

A similar case was that of an elderly retired man who committed suicide by exhaust fumes four months after his wife's death. The milkman found a note in the milk-box asking him to go to the garage to turn off the ignition switch in the car. There is insufficient information to indicate whether it was intended that the note should be found before death.

A single man, aged 57, committed suicide following the death of his parents. He hanged himself while living alone in the family home over the Christmas vacation.

An elderly retired engineer living with his wife became depressed three years before his suicide because of his son's death.

A young foreign immigrant, reserved, lonely, and schizoid, became involved with a professional man. She became depressed at one stage and took an overdose of sleeping tablets. She finally committed suicide in her flat by an overdose of nembutal. Her mother had died when she was young and she had been brought up in a girls' home in her native country.

Another immigrant, aged 35 and unmarried, was also a solitary and lonely type who seemed depressed at times and worried about his work. He left a note asking that his parents be told he had been killed in a car accident. There were indications that alcohol was a factor in his case.

Alcohol was certainly a factor in the suicide of a middle-aged man whose wife had died shortly before. In a depressed state, having consumed alcohol, he shot himself.

It is obvious from these brief notes that in few cases does one factor alone explain the suicide. Loneliness may have been very important in the cases quoted, but physical troubles, immaturity, and alcoholism were also present.

Isolation: Something akin to isolation or loneliness may have been important in over 20 suicides by rural workers—farmers, farmers' wives, fencers, sharemilkers, and others.

A young married sharemilker left his family and the farm to return to his brother's property, because of "nerves"—he had been very depressed and worried. He suffered from anxiety neurosis and seemed to feel isolated from the sibling support he needed. As with many rural suicides, he shot himself.

Another young farmer aged 22 years had attended a doctor the previous year and was described as "mentally unstable". He was withdrawn and solitary for some time before shooting himself.

A middle-aged farmer had recently sold his farm and bought another. He evidently regretted both transactions and became very disturbed in mind. He was found hanging, and an open verdict was returned at the inquest.

Insomnia, money worries, and concern about floods and drought are commonly found in farming suicides. Sharemilkers, dissatisfied with conditions—too much work, unsatisfactory premises, loss of stock—become sleepless, depressed, and suicidal. In one or two cases paranoid symptoms became apparent—a belief that neighbours were saying embarrassing things, that listening devices had been placed, the telephone tapped, and so on. In one such case the suicide shot his dog before shooting himself. His dog was the only available living creature to take with him into death.

A married farm labourer with four children had suffered a nervous breakdown six weeks before his death. In his note to his wife he said: "Dear . . . , I am deeply sorry about this situation. I did not intend to force it. However, that seems to be what is happening. I have no further control over it and I do not intend to make any squeals about the matter. By tonight I will be a nervous wreck again so I'm taking this way out. I know it is wrong but I cannot help it. I have ? it and that is all there is to it . . .". Underlying helplessness and despair are evident.

Some other cases had shown similar previous signs of depression, melancholy, and self-hate: "I'd be better off out of it. I'm just a hindrance to everyone, I'd be better off out of it."

Similarly, a middle-aged cowman refused to eat with other farmhands because he felt they were laughing at him. His *de facto* wife had left him three weeks before death. "By the time you get this letter I will be what everyone has wanted me to be, so it will save you the trouble of replying." Hostility and self-pity are mingled.

In another case violence and the possibility of homicide and suicide followed 10 years of domestic disharmony, during which period a middle-aged sharemilker had threatened suicide. He and his wife returned from a party and began to argue. He began to pour ether on the bed sheets until stopped by his wife. He then put everyone out of the house and shot himself.

A pig farmer killed himself violently with explosives after frequent threats of suicide. He had previously rung his doctor to tell him that he intended to kill himself.

From the frequency of suicide in rural communities, it may well be argued that the loneliness and isolation of country life may be as conducive to self-destruction as the crowded urban community. There may also be a greater lack of agencies capable of offering support to the depressive or suicidal person within his reach.

PREVIOUS ATTEMPTS OR THREATS

It has been argued that every suicide gives some form of warning before the final act. One would require detailed case-history recording covering many cases to confirm such a claim. But in at least 40 of the 200 cases examined for this study there was specific information about previous attempts, or mention of the possibility of suicide. Many of these attempts are in fact cries for help.

One woman, the mother of three young children, committed suicide by drinking chloralhydrate. For eight years she had been receiving treatment from doctors and specialists, and her condition had deteriorated after the birth of the third child. She had attempted suicide on three occasions before she finally took her life.

One old man had suffered for some years with a non-malignant ulcer. He was convinced that he had cancer. He had threatened suicide 14 months before his death, and on the morning of his suicide he told his neighbour of his intention. The neighbour, in the light of the previous threat, did not take the latest threat seriously and did not inform the police. In this case the suicide had remembered to stop the bread delivery as from the day of his death.

From the files studied, it appears that more females than males give warning of suicidal depression. This is in line with the higher incidence of attempted suicides among females. The females who finally committed suicide seemed to have failed to achieve the environmental change, or the return of love, or the treatment for disorder that their attempt called for.

Often the attempt and the suicide show a similar method. A married woman, aged 33, had suffered from acute depression for over two years. She believed (wrongly) that her husband was determined to put her into a mental hospital. Twelve months before her death she lay on a railway line, but it happened that the trains were not running that day. She finally committed suicide by throwing herself under a train. Most cases are less violent, but the method is often repeated, the commonest being overdoses of barbiturates.

Sheer physical and mental misery also play a part in longing for death, until the desire overcomes all resistance. A 60-year-old woman who for years had been an arthritic on crutches had often said she would like "to be with Jesus". She attempted suicide in a half-hearted way about 15 months before she finally took a lethal overdose of barbiturates.

Mental Illness: Kraepelin thought that one-third of all suicides suffer from neurosis, psychosis, or a personality disorder.²⁶ Suicide is rare in the mentally subnormal, in organic dementia, or in manic states. But depressive illness has high suicidal risk. This involves severe depression, profound pessimism, feelings of futility and worthlessness, a tendency to excessive guilt feelings, self reproach, and the wish to die.

Schizophrenics, in the early stages, often have a sinister feeling of impending catastrophe. Sometimes they may be under the influence of voices telling them to kill themselves to escape persecution. Abnormal personalities are suicide-prone, especially the hysterical personality which reacts to frustration with physical symptoms. An insatiable urge for love and attention can lead to exploiting the appeal effect of suicide. Anti-social psychopaths cannot cope with aggression and commit acts of violence against others and on themselves. Alcoholics may be chronic suicides, escaping from reality.

At least one-third of the 200 cases studied had a history of mental illness involving treatment in mental hospitals or psychiatric wards. There had been hospitalisation in many cases, although depression was the most common ailment. Some had been in mental hospitals several times; a record of three or four admissions was not uncommon.

Some of the suicides studied were alcoholics with allied mental illness. Nervous breakdowns were common, as well as endogenous depression associated with menstruation and pregnancy, and schizoid symptoms. One of the few women to shoot herself was menopausal and probably drunk at the time of her suicide. For 10 years she had received treatment for high blood pressure, coronary arterial disease, and mental depression.

A woman of 39 had been separated from her husband for 18 months. She had suffered a severe nervous breakdown after separation and had received treatment in mental hospital. She committed suicide by drowning the day after her home-coming.

Some people with anxiety neurosis committed suicide because of a feeling of complete failure. A middle-aged woman who had been in mental hospital 10 years earlier became distressed and depressed over minor matters such as tidiness in the house. She said in her suicide note: "Forgive me family, forgive me God, I've failed in the greatest thing of being a good wife and mother."

²⁶Kraepelin, Emil. *Lectures on Clinical Psychiatrics*. N.Y., Wood, 1917.

(NOTE—This proportion was also found in a study by Dr Erwin Ringel of Vienna published in 1961, but an earlier study by Dr Stearns of suicide in Massachusetts found that out of 167 cases studied somewhat over 50 percent were suffering from a definite mental disorder.)

Hypomanic depression and paranoia were present in the case of a 60-year-old man whose marriage had not been annulled. He was living with his *de facto* wife and son. Despite treatment in mental hospital, he continued to have periodic outbursts of temper and on the morning of his suicide he smashed his son's radio and guitar. A week before his death he discussed his physical condition (a spinal injury) and indicated his intention of committing suicide. In his suicide note he spoke of a relapse on the evening before caused by a "saboteur who mutilated papers which are vital in my work. I do hope it does not happen again. It destroys my confidence."

A nurse had entered mental hospital as a voluntary boarder six months before her death. She had attempted suicide by hanging. Evidence was given that she had been very unhappy because most of her friends had been married and she thought she was "missing out". A friend said, "To my knowledge she has not had any trouble with her male friends. In fact, she has been rather a recluse of late." She had had, in fact, two induced miscarriages and was menstruating at the time of suicide.

Two other groups remain. Some of those suffering from hypochondriasis have already been included in the previous cases. At least 15 people committed suicide believing they were suffering from cancer and the pathologists' reports showed them all to be wrong. Some were marginal cases of pill addiction who may, or may not, have deliberately intended suicide when they took an overdose. One was a widow who had previously taken overdoses.

The final main group is that of persons facing criminal convictions. A case history of a homosexual is given in detail in this chapter. Another homosexual—a married man with five young children—slashed his wrists after he had been accused of indecent assault on a male and ordered to appear in the Magistrate's Court. He left letters for his wife and friends saying that he was suffering from cancer of the bowel.

A charge of incest brought by his daughter and an allegation that her child was his, brought on the suicide of a successful business man. He made his will and wrote a letter to his wife asking her forgiveness. A third sexual case involved obscene exposure.

PROFESSIONAL OCCUPATIONS²⁷

From the information given on occupations, it appears that the social and occupational status of the New Zealand suicide covers a wider range than that of the criminal. Almost all the professions are represented—medical practitioners, accountants, schoolteachers, and solicitors. Several wealthy farmers and people prominent in business committed suicide. Some had retired.

²⁷For a discussion on social class and social mobility in New Zealand see an article by Portfield, Austin, and Gibbs, *Occupational Prestige and Social Mobility of Suicides in New Zealand*. *American Journal of Sociology*, 1960-61, 66, 147-152.

One would expect that the more educated person would normally choose the most painless and sophisticated methods of dying. But it is not always true. One young married professional man with young children threw himself with perfect timing in front of a train. Another was found dead of carbon monoxide poisoning in a box at the back of his garage. A third had inflicted multiple wounds on his body. From a sample of 15 persons in this group only six chose barbiturates or poison gas. Hanging and shooting were the other two most prevalent methods.

Two men charged with drunken driving killed themselves rather than appear in court. One, living as a boarder, was described by his landlady as having been depressed. The other, a heavy drinker, said he would rather commit suicide than go to jail. A farm manager on the day of his suicide had received an inquiry about stock losses.

CASES

The first is that of a middle-aged woman who died of an overdose of tuinal. Polish by birth, she and her family were forced to spend two years in a Russian labour camp. Her husband was killed by the Germans, and two sons died in Russia. After some time in India and England, she joined her married daughter in New Zealand. Latterly she suffered from amnesia and sleeplessness.

Her suicide note read:

"To whom it may concern.

Please do not bother people with unnecessary lot of questions why I die and how. I can say it in one sentence: Because I am so tired of life! That is all! How? It is not difficult. My doctor would not give me strong enough pills to kill me. May be he understood what I gone through, (I know he did) but it is not difficult to change looks and name and go to few distant places to get a few strong pills here and there.

So I got hold of enough (I hope) to do the trick, now why? Yes Why? Because we are bound to die so few years, I do not think make difference. And most of all because I have nothing to live for!

I have gone through hell as a young girl! Oh! Yes you all know that all though you chose your course and do not want to know what Soviet Union can do to reduce human being to nothing. Let your course be free! Let your good and very gentle . . . shake hand of Mr Kruschev on whose hand is blood not only thousands of Hungarians, but millions of his own people. So life is go on! For some in starvation, and misery, for some in peace and closed concieus, for some in luxury! I can now feel angry for one, and sorry for others! My life was one misery and struggle and now is empty and without goal. I lost faith in God (How do you explain good life of man like Khrushchev and misery of starved people!) I lost faith in humanity all though I was shown love, by some people goodness of

heart and kindness but I consider them as a freak of nature. Ah! Yes there is Dr Albert! The only man I know who gives his life for suffering.

But is it good for me to live? There are people who tell you, "pull yourself together", who even do not know what it is mean. All or people who say, I am sick and tired of your complaining, who do not have conscience and do not know what it is to go through hell of suffering and being not able to sleep for more than twenty years. Just people self centred and selfish!

I forgive them all because they do not know any difference. Any heart! Oh! Yes I can exist another ten, twenty or more years between four more or less dirty walls and shaky furniture, for which I have to pay nearly half my salary! But what more! Nothing. Memory of horrible past and wishings of future! Is it enough to live!? What's the use!

I am sorry for hurting my daughters, but they have their own family, they are young and loving and they will forgive. After all they do not remember what I have gone through and they do not know what agony I am going now. Loneliness is not being alone, it is a state of mind of this same nothingness.

. . . of nothingness! Did you ever think of that!? I thank all those people who were good to me and forgive all those who were bad. I hope you might. There is nothing after death, only peace . . . I came here to be happy but it did not work! After nearly two years of waiting I know there is nothing for me! Nothing at all! Just dirty room and work! I only hope that people I am fond of at this moment have are good time. Good luck to them and I hope they forget me as fast as possible. My writing is getting worse and worse as my mind is getting foggy. I hope you will understand me. Please do not put my daughter in all this as her husband is S. A. Administration. After all only my life is taken and as a free person I am entitled to it. I hope the money I have in the Post Office will cover my funeral I beg be burn and my ashes scattered on the Golf Course. It has beautiful grass and I want my ashes to be some use. Well that is all! Please forgive me all though I do not know or not. After all I am not doing any harm."

This case illustrates the critical saturation point of human traumatic experiences and so complete a fatigue of mind and spirit that the woman could not endure even the prospect of a happy (and possibly emotionally exhausting) reunion with her daughter and grandchildren.

The second case is that of a middle-aged Maori of strong religious belief whose daughter was pregnant for the third time to unknown men. Her father's intention was to commit suicide and to take his daughter with him. He then wrote notes in a religious vein thanking the Lord for stopping his hand from harming his daughter. The underlying hostility, violence, and possible guilt were shown in his choice of suicide. Holding

a dagger to his abdomen, he drove his car at 50 miles an hour into an oncoming truck. He had intended to kill his daughter in the same way.

Dr John M. MacDonald says: "Suicide and homicide by automobile are attempted more frequently than is generally recognised. Awareness of this problem on the part of police officers and hospital surgeons, who treat the victims of automobile wrecks, should aid in detection of such acts. This should facilitate early psychiatric evaluation and treatment of these persons who are a danger to themselves and often to other drivers on our highways."²⁸

The third case is one of extreme despondency and isolation. The man concerned was 20 years old and had drifted from one form of intellectual occupation to another before studying psychology at the local university. A back injury had kept him away from school, sport, and friends. He was nervous and had suffered from blackouts and a nervous breakdown. He had himself on one occasion suggested that he should see a psychiatrist.

On the night of his suicide he enclosed his head in a plastic bag and tied a string round his neck. He had previously written:

"Since your departure from this place
The skies have closed from me their secrets
The image of the earth as a living entity
Has faded into a unresponsive muddiness.
The grass is no longer green,
Nor the bird beautiful.
The song I hear from nature
Is in mournful remembrance of the past.
The trees bear tainted fruit,
Even the weeds which once grew in playfulness
to tease the owner of some ordered garden
have lost their purpose—
they grow now only for want of better
things to do.
Wide spaces! Once so full of joy and meaning,
You have become so empty that there is no
comfort in your solitude.
Dear God reintroduce some reason for being
into this world. We are dying."

The three further case histories of suicides which follow illustrate other of the factors already discussed.

One (Case 1) relates to a young man whose conflicts were too great for him to bear—he had found it impossible to accept his inevitable development as a homosexual and the social stigma of being discovered and punished. His mother's death, his unsettled home background, and

²⁸*Suicide and Homicide by Automobile*: Amer. Journal of Psych. 121/4 Oct. 1964.

his seduction all contributed to his development as a homosexual and to his attempts at suicide. His calls for help indicated the unhappiness of a man torn between his ethical beliefs and his sexual deviance. His history is given in his own words. Despite previous suicide attempts, he was not taken into custody on the final night when he was interviewed. He took advantage of the respite to take his life.

The second case (Case 2) illustrates the presence of a physiological factor—epilepsy. But it is also affected by the death of the father, the rejection of the mother, hysteria, alcoholism, and paranoia.

In both 1 and 2 the men committed suicide in early manhood. They each lost a parent in early childhood, and they both had sexual problems.

In the third case (Case 3) there is an early traumatic experience—the burning of fingers—the death of his father and an unkind stepfather. There was an unhappy marriage which coincided with frequent offences against the law, followed by a reasonably stable phase, apart from suspected self-injuries.

Case 1

"On 3 March 1929 I was born, the second son born to my parents. The family was completed two years later when my sister was born.

My father worked for shipping or armament firms.

Next thing I remember is living in Dunoon with relatives of father's and that's when my mother died, I think. I had attended a school there in the country. I remember quite distinctly, for we have to walk home and we used to pinch turnips out of a farmer's field and eat them along the road. Next shift was Glasgow and a new school with a Mr Muir, headmaster, and a Mr Baird, second in command. Glasgow was no good as far as I can remember. I used to go for walks along the canal bank bird-nesting and I remember getting a hiding for going as far as Maryhill once and the police brought me back. During this time we had several housekeepers and they were always 'Mrs Something' but I can't remember one name. My Auntie Meg, who is my mother's sister, lived quite near and I used to spend a lot of time at their place.

When the War began we were evacuated to a country town. All the people from the countryside were gathered in the hall to take as many evacuees as possible; we were among the last to go, being a group of three and they didn't want to split the family up. So began my life on the farm.

My hosts were strict Presbyterians and all attended church regularly.

Well, into the midst of this came the news that my father had married again to a widow with two sons. Our stepmother decided that we should all go back to Glasgow; both my brother and sister were quite delighted at this prospect, the only dissenter being me. However, off to Glasgow we went, and we moved into our old home. My stepmother owned a small hotel or boarding house near the centre of Glasgow; this property she sold.

We were not a very happy family, I'm afraid. City life was strange and loathsome to me and although I managed to become friends with one of the boys, I never had any affection for my stepmother or her eldest son. My dialect didn't help matters any and it was only with difficulty that I could make myself understood. I think it was about this time that I developed an impediment in my speech, which became progressively worse; now this stammering has been almost cured. There are times, however, when I'm emotionally upset or tired that it becomes evident. However to keep to the story. On arrival back in Glasgow we were treated more or less as guests by our stepmother. [As] an illustration of this, we'll take meals. We were served in the dining room while her own two sons ate their meals in the kitchen. Of course, I was very homesick in these surroundings and stayed out of doors as much as possible. I corresponded with the farmer but my stepmother told me to stop this and burned one of their letters before me.

P.T. during the war was conducted at a small annexe about $1\frac{1}{2}$ miles away and it was there that I met a doctor who instructed classes on First-Aid at the A.R.P. Post. He asked our P.T. instructor for volunteer pupils to assist him in his demonstrations; another boy and me were the only two to be accepted. To begin with he demonstrated the proper use of bandages and splints etc. on me, then at the next meeting I was clad only in a pair of togs while he drew lines all over my body in different colour crayons, outlining pressure points. After this he took me home to his flat to remove these markings. He was a bachelor. He explained to me all the functionings of the body and introduced me to mutual masturbation.

As soon as ever I could leave school I did so and went back and worked on the farm. That was the last time I saw my father alive and I have only seen my stepmother once since then and that was at my father's funeral. Perhaps this funeral is worth mentioning as it definitely was an event in my life. Since leaving Glasgow I never corresponded with anyone there and I was working away at the back of the farm one day when the farmer came down with a piece of paper in his hand. It was a telegram from my stepmother saying father was dead and that the cremation was at such and such a time and where. It came as a shock to me for my father enjoyed good health as far as I know. Well the prodigal son returned to Glasgow. There was lots of people at the funeral and yet I only knew five of them, my brother, sister, stepmother, and her two sons. None of my mother's people were there and none of father's relations either. I had the impression that everyone was looking at me and talking about me. As soon as we got back to the house I shook hands with everyone present and thanked them for attending, then I excused myself and went back to the farm.

At this time I had a girl friend; she was the daughter of the laird's gamekeeper. She met a young medical student and I guess I was a pretty broken-hearted person then. No one at home knew what happened between her and me. Well I left College and took up herd

testing not being able to settle down on the farm just then. However, I used always to come home to the farm about every three weeks for my days off. Imagine my surprise when, at home one night, my ex-girl friend's father came up asking to speak to me. He told me she was expecting and accused me straight out and asked me what I was going to do about it. I told him that all the time I had been going with her we had never had intercourse. I told him to what extent we had played around and I also suggested that he ask her about her boy friend at Ayr. Well stories in country districts get around pretty fast and it was generally accepted that she was going to have a baby and that I was the father. She later married the child's father.

With the Young Farmers' Club I went on numerous excursions including the London Dairy Show. It was while attending this event that the next chapter in my life takes place. My friends went with the party to London where we all stayed in the same hotel. It was our first visit to this big city and we were determined to see as much as possible during the week we were there. We attended the Dairy Show, of course, but we also went to the Windmill Show and picked up girls in Piccadilly and went to a few different pubs and clubs; then we went to their flats and slept with them all night. We were terribly worried next day in case we had contacted V.D. and although none of us mentioned it I'm sure we all felt that it wasn't worth the money or the worry. However, we had to be men and we adopted a similar pattern of behaviour on all our night activities while in London. To play safe I tried to pick young girls and took them to a film show where we could sit and play around with each other's sexual organs and I got more satisfaction from this method without the anxiety of V.D. contamination. The next step in this degrading cycle was self masturbation and mutual masturbation. A male friend and I practised this for something like a period of four years. In this time I'd make the acquaintance of a girl, whom I used to accompany to dances, Y.F.C. events, etc. We also played tennis and went swimming when conditions were right. We had intercourse on several occasions even though she was only 18 at the time. Well, things just couldn't continue the way they were and I decided to break with my male friend but this proved too difficult for my weak character and the only solution was for me to get right away out of it completely.

As you are aware everyone at home had to spend a period of time in the armed forces. I spent some 16 months in the Royal Navy before I was discharged on medical grounds. The illness that appears on my discharge papers is a form of schizophrenia. I can't recall the exact term used, however, it's of no account as the facts that I will now reveal to you will put you in the picture properly.

This period of my life comes in between leaving school and commencing work as a herd tester in Scotland, roughly about 11 years ago.

You will recall the influence that the doctor had over me at that time, and I was aware of the fact that I was well on the way to becoming a confirmed homosexual. Right throughout my life I have despised this

weakness of mine and have tried to overcome it "at times" without any success. The environment that the Royal Navy has to offer are not exactly conducive to good clean living, and it's there that the germ I have planted in me developed to its full maturity.

About 95 percent of all the discussions that take place in a crowded mess deck concerns sex in its various forms. All the lads are at an age when they are trying to prove their manhood [and] at the same time maintain the naval tradition of having a way with women. To be in the swim and also off course to satisfy my sexual desires I went "ashore" as often as I could and kept the company of usual sluts that one finds hanging around naval bases. This was also the beginning of my trips "up the line", to London that I was to continue in later life with my male friend when we were supposedly attending the dairy shows.

Having been reared by staunch Presbyterians, this life that I was leading used to trouble my conscience to such an extent that I decided to do something about it. I sought relief through the medium of the church and I tried desperately hard to become a Christian. At this time I was stationed at Portsmouth and things went well for a time; then I was selected to attend a moral leadership course being held in Devon by the R.A.F. My instructions were to continue to Plymouth as soon as the course was completed. This course was conducted by the combined churches and we had lectures by all the leading men in their particular spheres. We were there for 10 days and it provided me with too much food for thought; this caused me to review my life in retrospect and the conclusion I arrived at was that I was a hopelessly lost soul and the only way out was suicide.

Exactly how I was going to carry it out was not clear in my mind, as I wanted to be as little trouble as possible. Finally I decided to carry on to Devonport as instructed and after unloading my gear on the ship I would make my way ashore where I wouldn't be known and there I would do the deed. I went round the local chemist shops until I had purchased about 300 aspirin tablets then to while away the time I went to a theatre. On leaving the theatre I went for a long walk to give myself time to consider the action that I was about to take, and to make certain that there was no alternative to it. It must have been well after midnight by this time and I found myself in the gardens along the main highway. Under the shelter of some bushes I lay down and crushed all the tablets into a powder. This I endeavoured to eat but it is most unpalatable and it was with great determination that I managed to swallow as much as I did. I can remember being violently sick and very cold and it was the next day that I came to in the naval hospital.

How I got there I've no idea and didn't care very much anyway. I was bitterly disappointed at my failure and as I began to realise the position I was now in, I became desperate for I felt sure the naval authorities would take a dim view of the whole affair. However, I was closely guarded and could do nothing to alter the situation in my favour. Occupational therapy was the only treatment that I recollect

having. In due course I was discharged and I returned to Scotland without anyone knowing about my illness. This has been my most closely guarded secret and has never been revealed until now. From there onwards you have all the details or at least all the relevant factors.

Now this brings me up to the time of my arrest.

Correction: One more indiscretion just prior to my arrest I had been up in another district for some few weeks, and while I was there I had another fit of depression and once again I thought of suicide. This was not brought about by any religious sentiments, I had long ago given that up for the sake of peace of mind. It was partly because of strain, and the heat, and the futility of my life. However, on coming back things began to move at a fair pace leading up to my arrest.

During the time I was on remand I was treated very decently by the Police; they allowed me to remain outside most of the day without being asked to give my word not to try to escape. There was no question of parole and I didn't consider that I was under any obligation not to make a break if I thought it worth the risk. Having plenty of time on my hands I quickly fell into the habit of self analysis, with the usual fatal results. However, this time I wasn't going to give up so easily and I made up my mind that a prison sentence would perhaps do me good provided of course that it wasn't too long. A year was what I was prepared to accept, but should I be given a longer sentence then I was prepared to take the old suicide action again. I had all the details worked out neatly this time with the co-operation of a fellow prisoner, an unsuspecting Maori.

There you have it; one attempted, and another two contemplated suicides.

That's the background that I purposely kept hidden, but it has been too much of a burden for me to bear and so [at] long last I've decided to lighten the load.

At the suggestion of my girl I decided to come to New Zealand for two or three years, by that time she would be older and we could think about getting married if we still felt that way inclined. She had an uncle and aunt who had a farm in New Zealand, so I made arrangements to get a group situated somewhere close to them in case I had any nostalgic feelings.

The time comes to put away all childish things and we discussed this at length. The outcome of which was that we both joined the Masonic Lodge to associate with older men and try and settle down.

In New Zealand John took my previous friend's place in my life, that's really what it amounts to. So there I was having come 12,000 miles to cure the disease, condition, or whatever you'd like to call it, only to lapse back into all the old familiar ways a few short months after arrival. I bought a car and at Xmas time we packed a tent and went out exploring the North Island. Whenever I had holidays we did this and he came with me nearly every time. In the five years that I've been here I've visited places right through the country, the North

Island especially. A twist of fate suspended our relationship. After he went I took his younger brother with me when I went to the baths and I also took the elder sister occasionally. She was a good sort and I'm afraid easy prey to anyone, however, I shouldn't mention that as she is now married and appears settled down. He was the youngest person I have ever interfered with, but I had known for some time that he practised masturbation. He was a very lazy boy and very spoiled by his parents and he was backward at school, which all went to make him a bully at school for he was at least a year older than anyone else in his form. I want to make it clear that I did not introduce him to this foul practice. He had told me about girls that he had "done" and also about playing around with other boys at school and at Scouts' camps, and all this I believe was physically possible for him. Now that might seem a pretty poor excuse for me to offer and perhaps I shouldn't have done so, but I'm trying to convince myself that I'm not quite as bad as I know I really am.

My main worries are really just beginning, now that the time for my release is close at hand, and quite frankly I'm not at all sure that I'm in a fit mental state to cope with the problem of rehabilitation."

For about two years after release he continued his homosexual activities. In 1963 a complaint was made to the Police and he committed suicide on the night he was interviewed, at the age of 34 years.

Case 2

R. was born in 1931, the youngest of eight children. His father died the following year. His mother remarried and three children were born of the second marriage. R. went to school but played truant most of the time and left at the age of 13 years while still in Standard I. He was unable to read or write although he was of dull normal intelligence.

At the age of 16 he married a girl of the same age who was already pregnant to him. Domestic trouble soon followed and R. frequently deserted his wife and family. By the age of 20 they had three children. By this time there was a judicial separation and R. was not supporting his family. On two or three occasions he was imprisoned for default of maintenance.

He eventually went to Borstal for breaking, entering, and theft and was released after 15 months following repeated petitions from his wife. On parole, he reported once to the probation officer, had three jobs in as many days, and twice left his home within a fortnight. Six months later he was imprisoned for stealing from his sister's house. He had by now become a heavy drinker.

Three months after his release from this sentence he was again in prison for breaking, entering, and theft, for being idle and disorderly, and for false pretences. (He had learned to write cheques.) During this prison term of three years he was described as accident-prone; he had hurt his foot on a tractor, burned his hands in boiling fat, and had several other mishaps.

Other prison terms followed in quick succession and he bitterly resented probation. In 1960, while in prison, he swallowed a razor blade, safety pin, and two needles. A psychiatrist's report described him as a "difficult epileptic, very paranoid in his attitude to authority . . . especially the prison doctor." His body was gradually covered with tattoos—his wife's name, two eagles on his back, a devil on his abdomen, and many others.

He had now qualified for preventive detention and he repeatedly told the prison psychologist that he would never "do P.D."—he would do away with himself instead. A psychologist's report in 1959 said:

"He has for several years suspected his mother's relationship to him, and a great deal of bitterness towards her has carried over after her death." She had died in 1957.

He did not get preventive detention at his next conviction and was released early in 1964. Less than a month later, while living with a woman friend and after consuming alcohol, he took over 30 sleeping tablets and died. There was no warning of his act.

Case 3

When Peter was five years old, his father died. Peter and two siblings were in an orphanage for the next three years. His mother remarried and the stepfather was very cruel to him. He suffered a burned hand when he was a year old and two fingers remained paralysed. He left school at 13 and became a bushman.

At the age of 22 he married a woman nine years older and was divorced four years later. During these unhappy years he committed nine offences, including false pretences and theft, and served three brief prison terms. During the same period he met another woman and, with his wife's consent, they cohabited. The first child was born before the divorce. After the War he had three minor convictions.

When Peter was 44, his elder daughter laid a complaint of abortion against her father and mother. In Court she ascribed her pregnancy to her boyfriend. Father and mother used wire covered with plastic for the abortion.

While in prison for abortion, Peter suffered two eye injuries (he had also had an accident in the Army involving the loss of fingers). The medical report stated: "From the history it would appear that these injuries were self-inflicted, although no definite proof can be given. It was felt that he was probably interfering with the dressings to the eyes in hospital." He then made an application through his lawyers for early release.

An eye specialist's report said: "It is extremely difficult to assess this patient's disability in view of the fact that his answers to subjective tests are unreliable. He is known to have prolonged his stay in Wellington Hospital while a prisoner at Mount Crawford by inflicting further

superficial damage to his eyes. He has attended an outpatient session with an abrasion of the right eye, when under my care, which had the characteristic appearance of being caused by a finger nail . . ."

He was released after two and a quarter years. Inflammation of the eyes, general debility and sleeplessness followed his return home; all were thought to be due to emotional tension caused by the effort to rehabilitate himself.

Domestic trouble began almost immediately and Peter threatened to kill himself and his wife. Three months after release, he committed incest with his younger daughter. His wife informed the police and on the following day he took a fatal dose of barbiturates.

PREVENTION OF SUICIDE

According to Dublin²⁹ the outstanding professional agency in its field in the United States today is the Suicide Prevention Centre in Los Angeles, organised and directed by two psychologists and a psychiatrist. This exclusively professional agency is financed by the State and maintains a constant research programme. It employs both clinical and research psychologists, psychiatric social workers, sociologists, and public health nurses. One of the aims of the clinic is to "arouse and co-ordinate the interests of the many official and voluntary agencies" concerned with preventing suicide.

In New Zealand under the Health Amendment Act 1960, a Magistrate is given power to make an order committing any person found attempting to commit suicide to any hospital or to any other suitable place for such period not exceeding three months as the Court thinks necessary. This affords an opportunity for the Los Angeles technique of a full psychiatric interview, for families to be visited by a social worker, and for referral to the appropriate agencies best suited to render service.

One important result of the work at Los Angeles has been to show that potential suicides can be readily distinguished from other people with problems. As we have seen, such pre-suicidal symptoms as depression, threats of suicide, and suicidal fantasies are often apparent, and in such cases it may be necessary to maintain constant contact with discharged patients and their families. The Centre's studies—and, it is hoped, the New Zealand study—will serve to scotch the fallacy that a person who threatens suicide will not commit suicide.

A growing need exists for this kind of service at a time when there is a significant increase in the use of barbiturates by suicides. It could be one of the functions of psychiatric social workers and agency visitors to hand out small amounts of soporifics and analgesics to potentially suicidal persons. They might also try to prevent by some means the practice among such people of going to more than one doctor for more barbiturates. This is a problem at all ages.

²⁹Dublin, L. I., *Suicide*. The Ronald Press Co., N.Y., page 184.

As "flatting" and boarding become more common in urban areas, patients may be encouraged to join community groups in order to offset the loneliness and isolation felt by people ill-fitted to cope with such feelings. The problem of loneliness in rural areas remains. Unless the suicidal syndromes are recognised and action taken by such officials as clergymen, schoolteachers, doctors, and police, there is little else that seems possible to deal with the situation in country districts.

Adolescent acting-out in the form of attempted suicide (as in delinquency) poses one of our major problems. The number of girls deserted by their lovers at pregnancy, or for some other reason, raises the problem of more education in living and, particularly, in sexual behaviour at the school level. Anxiety and depression at university level are at last being recognised as danger-signals. But some such cases still reach the stage of suicide.

When violence has been threatened or displayed in a close personal or domestic relationship, along with depressive or withdrawal symptoms, referral to a clinic or to medical advice (although often difficult to suggest) may be urgently necessary. Intervention by the Samaritan Service may prove valuable in counselling such people and in persuading them to accept treatment.

The significant increase in the use of analgesics and soporifics (cf. Statistical Analysis) is a cause for concern. In Russia doctors may supply only very small amounts of these substances to their patients and the trouble and expense of visiting sufficient doctors to amass a lethal dose might well discourage many people. Another method might be to zone patients so that they could be supplied only by certain chemists. However, the determined suicide would no doubt find alternative ways of carrying out his intention.

SUICIDE DEATH RATES PER 100,000 POPULATION

W.H.O. Figures

	1951	1955	1959	1961
Australia	9.5	10.3	11.1	11.9
Austria	22.7	23.4	24.8	21.9
Belgium	13.8	13.5	13.1	14.6
Canada .. ..	..	..	7.5	7.6
Ceylon	7.4	6.9	8.3	9.9
Czechoslovakia ..	..	..	..	20.6
Denmark	23.6	23.3	21.0	16.9
Egypt	0.7	0.2	0.1 (1958)	..
Finland	15.7	19.9	20.0	20.6
France	15.5	15.9	16.9	15.9
W. Germany	18.2	19.2	18.7	18.7
W. Berlin	34.5	34.3	33.9	37.0
Democratic Republic ..	29.0	27.7	28.4 (1958)	..
Hungary .. ..	..	20.6	25.7	25.4
Israel	6.5	5.5	7.0	6.4 (1960)
Italy	6.8	6.6	6.2	5.6
Japan	18.3	25.2	22.7	19.6
Netherlands	6.0	6.0	7.0	6.6
New Zealand	9.9	9.0	8.7	8.4
Portugal	10.2	9.2	9.2	8.7
Eire	2.6	2.3	2.5	3.2

SUICIDE DEATH RATES PER 100,000 POPULATION—*continued*

				W.H.O. Figures			
				1951	1955	1959	1961
S. Africa (Europeans)	..	..	10.1	11.3	12.0	14.1 (1960)	14.1 (1960)
(Africans)	..	..	..	..	3.1	4.3 (1960)	4.3 (1960)
Spain	..	..	5.9	5.5	5.2	5.5 (1960)	5.5 (1960)
Sweden	..	..	16.2	17.8	18.1	16.9	16.9
Switzerland	..	..	21.1	21.6	19.4	18.2	18.2
U.K. (England and Wales)	..	..	10.2	11.3	11.5	11.3	11.3
(Scotland)	..	..	5.4	7.7	8.5	7.9	7.9
(N. Ireland)	..	..	4.1	3.3	4.1	5.0	5.0
U.S.A. (all races)	..	..	10.4	10.2	10.6	10.5	10.5
White	..	..	11.1	11.1	11.3	..	..
Negroes	..	..	4.1	3.8	3.3	..	..

NOTE—No significant correlation emerged from a study of international homicide/suicide rates per 100,000 adult population.

SUICIDE AND SELF-INFLICTED INJURY BY SOPORIFIC AND ANALGESIC SUBSTANCES, 1955–1963

For most age groups, the rates of suicide and self-inflicted injury by analgesic and soporific substances have shown a slight tendency to rise between 1955 and 1961, with higher values in 1962 and 1963 (as, for example, in the graph of men aged 30–34 and 15–19). The high values could show the beginning of a markedly increasing trend, or they could be due to chance, but it is too early to tell.

However, rates for girls of 15–19 show a rather more definite upward trend, and rates for both men and women of 40–50 show very definite upward movements. The 't' values for these age groups show that the trends are significant; there is a less than 1 percent probability that the rates are due to chance.

The square of the coefficient of correlation, (r^2) shows the proportion of the variance of the rates of suicide and self-inflicted injury which is explained by the trend line. In most cases this proportion is fairly high—between 50 percent and 80 percent.

For accidental poisoning by barbiturates, the rates for women in the 15–19 and 40–50 age groups show definite upward trends. Men in the same age groups are scattered and show no significant trend.

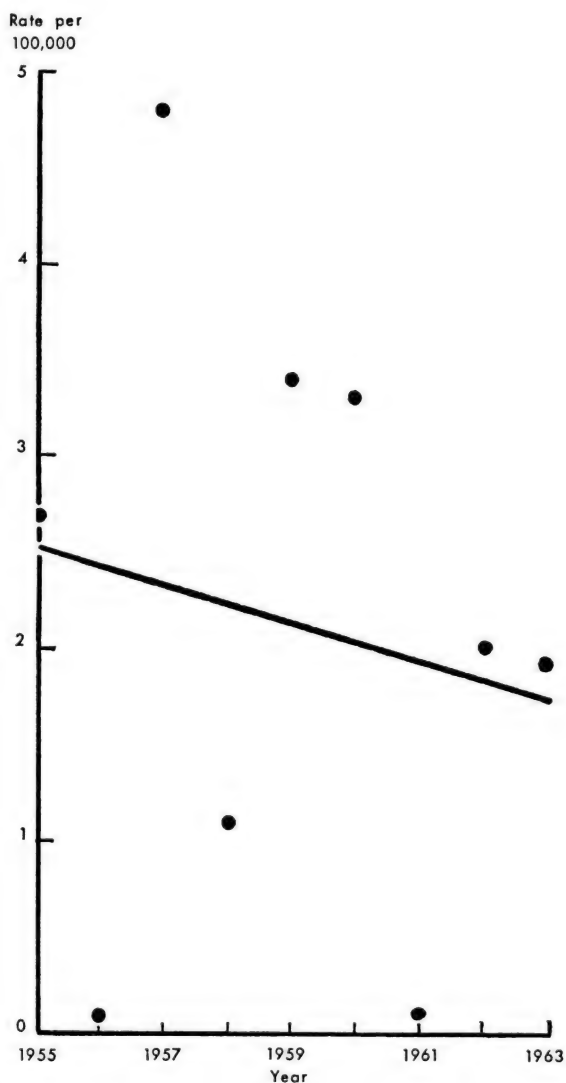
For suicide and self-inflicted injury by both barbiturates and analgesic and soporific substances, the absolute rates for men are less than those for women. This may be due to a male preference for more violent means of suicide such as firearms; women tend to choose less violent methods.

The upward trends in suicides and attempted suicides by barbiturates are probably due to the ready availability and frequent use of these substances over the last 10 years. People of the 40–50 age group tend to have more worries and, therefore, are more likely to be treated by doctors with these drugs; thus they are readily available in the house.

The upward trend of suicides and self-inflicted injury not resulting in death by barbiturates and soporific and analgesic substances can be illustrated graphically:

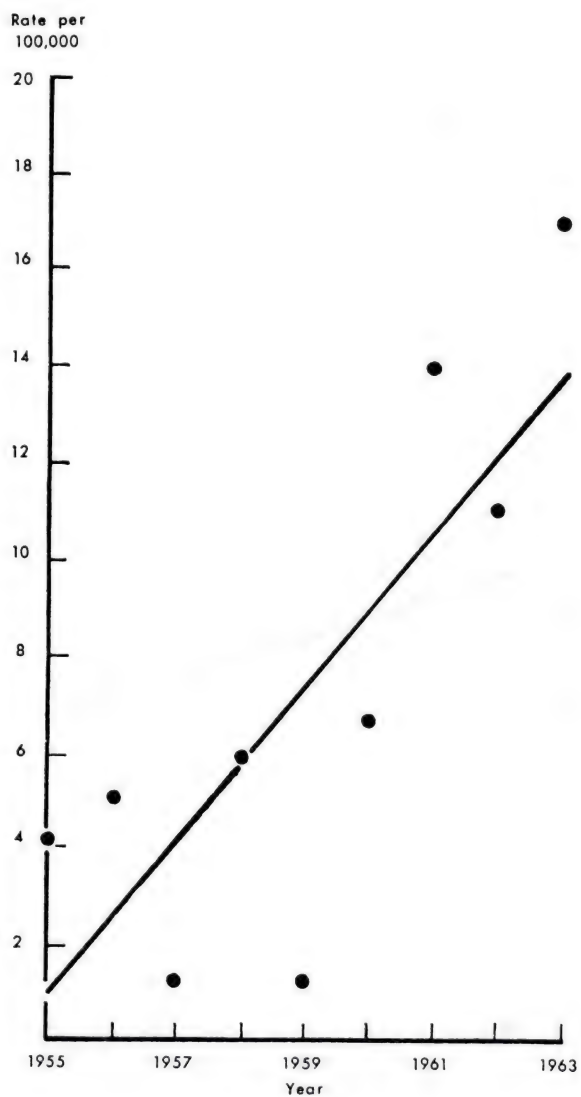
ACCIDENTAL POISONING BY BARBITURATES 1955 - 1963, MALES AGED 15 - 19

RATE PER 100,000 MALE POPULATION AGED 15 - 19



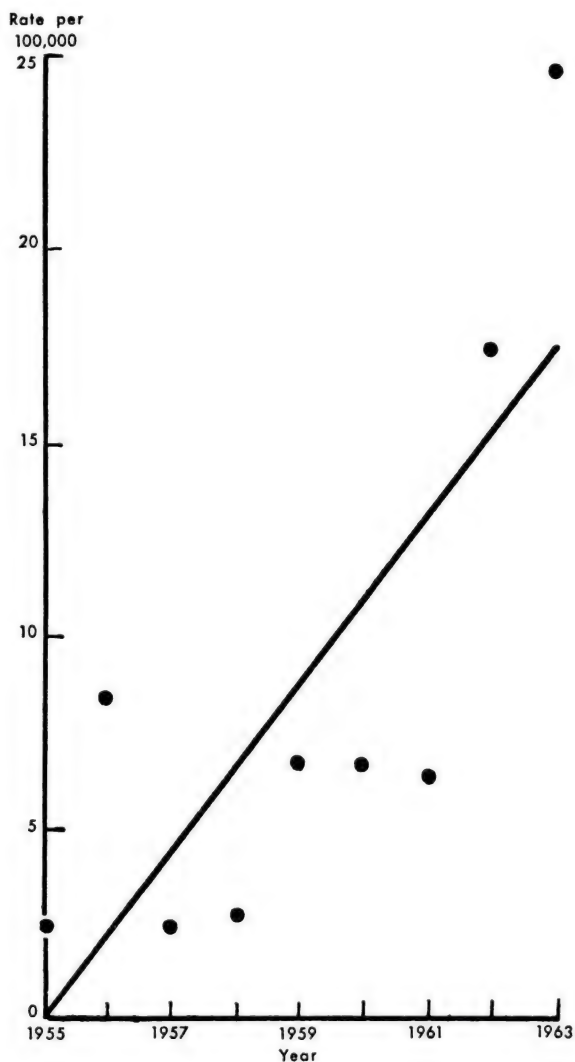
ACCIDENTAL POISONING BY BARBITURATES 1955 - 1963,
FEMALES AGED 15 - 19

RATE PER 100,000 FEMALE POPULATION AGED 15 - 19



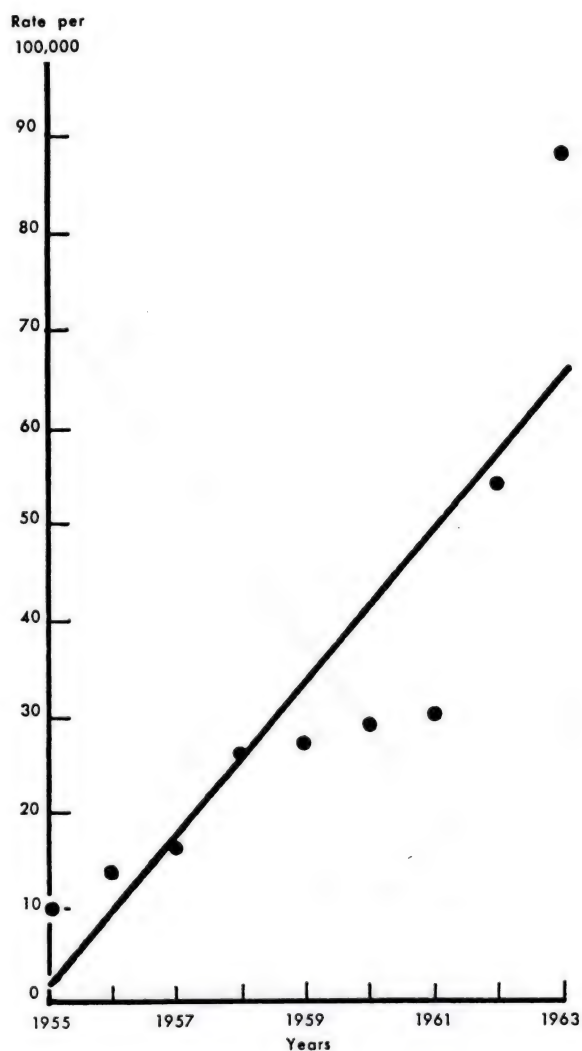
SUICIDE AND SELF - INFLICTED INJURY FROM POISONING
BY ANALGESIC AND SOPORIFIC SUBSTANCES 1955 - 1963,
MALES AGED 15 - 19

RATE PER 100,000 MALE POPULATION AGED 15 - 19



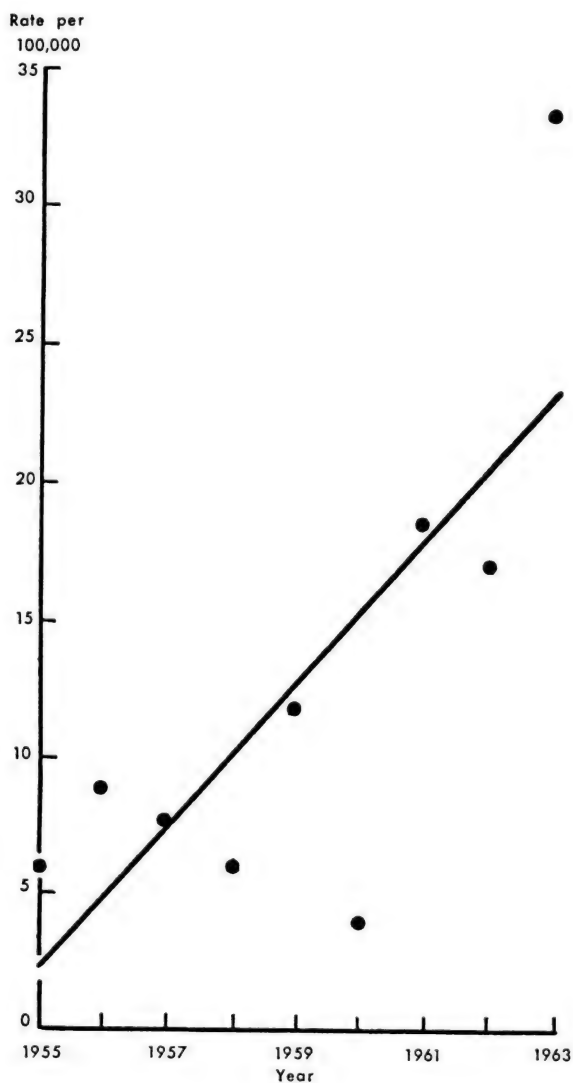
SUICIDE AND SELF - INFLICTED INJURY FROM POISONING
BY ANALGESIC AND SOPORIFIC SUBSTANCES 1955 - 1963,
FEMALES AGED 15 - 19

RATE PER 100,000 FEMALE POPULATION AGED 15 - 19



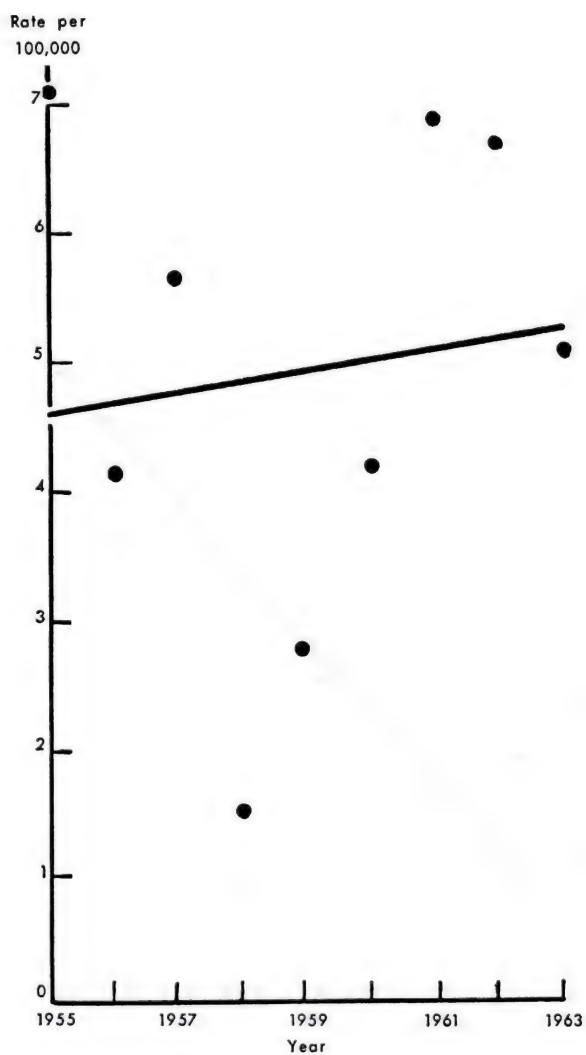
SUICIDE AND SELF - INFLICTED INJURY FROM POISONING
BY ANALGESIC AND SOPORIFIC SUBSTANCES 1955 - 1963,
MALES AGED 30 - 34

RATE PER 100,000 MALE POPULATION AGED 30 - 34



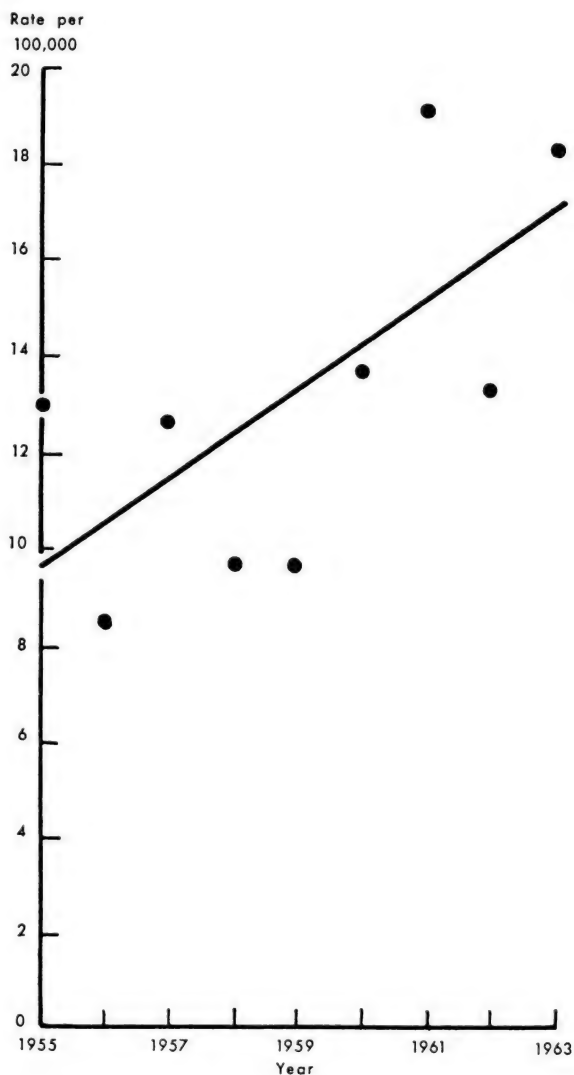
ACCIDENTAL POISONING BY BARBITURATES 1955 - 1963,
MALES AGED 40 - 44

RATE PER 100,000 MALE POPULATION AGED 40 - 44



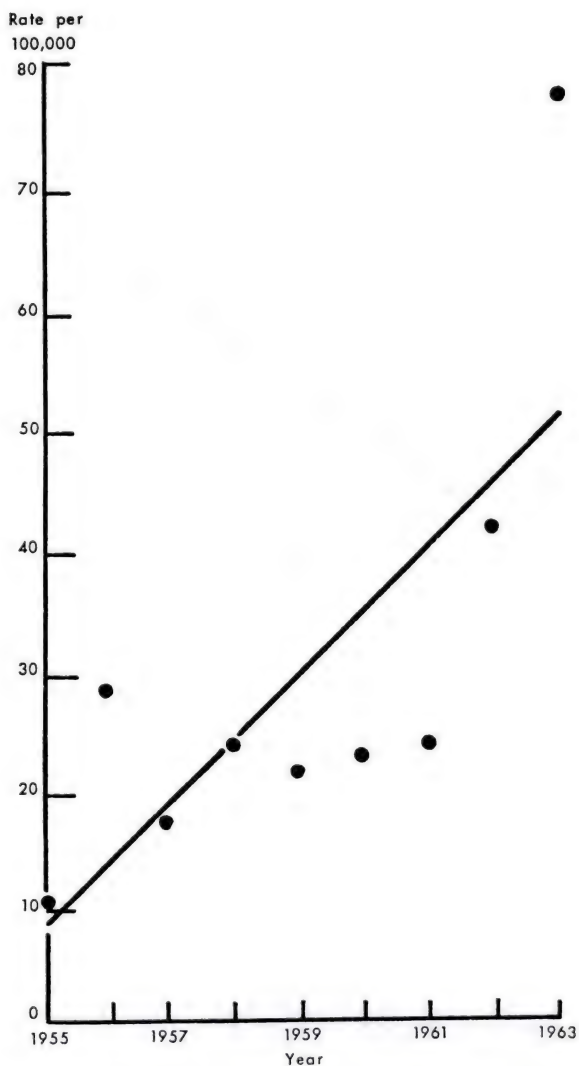
ACCIDENTAL POISONING BY BARBITURATES 1955 - 1963,
FEMALES AGED 40 - 44

RATE PER 100,000 FEMALE POPULATION AGED 40-44



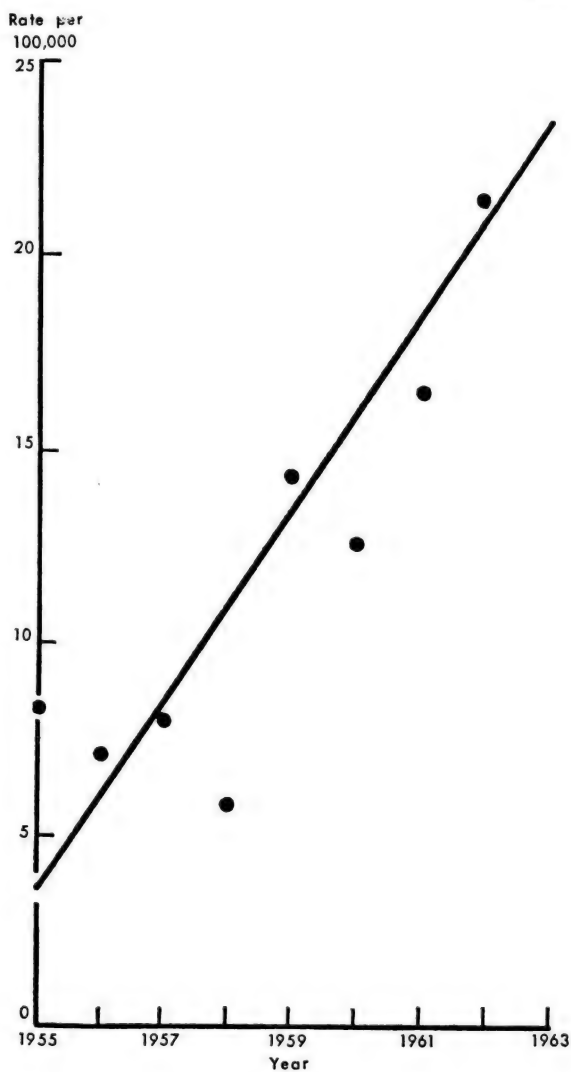
SUICIDE AND SELF - INFLICTED INJURY FROM POISONING
BY ANALGESIC AND SOPORIFIC SUBSTANCES 1955-1963,
FEMALES AGED 40 - 44

RATE PER 100,000 FEMALE POPULATION AGED 40 - 44



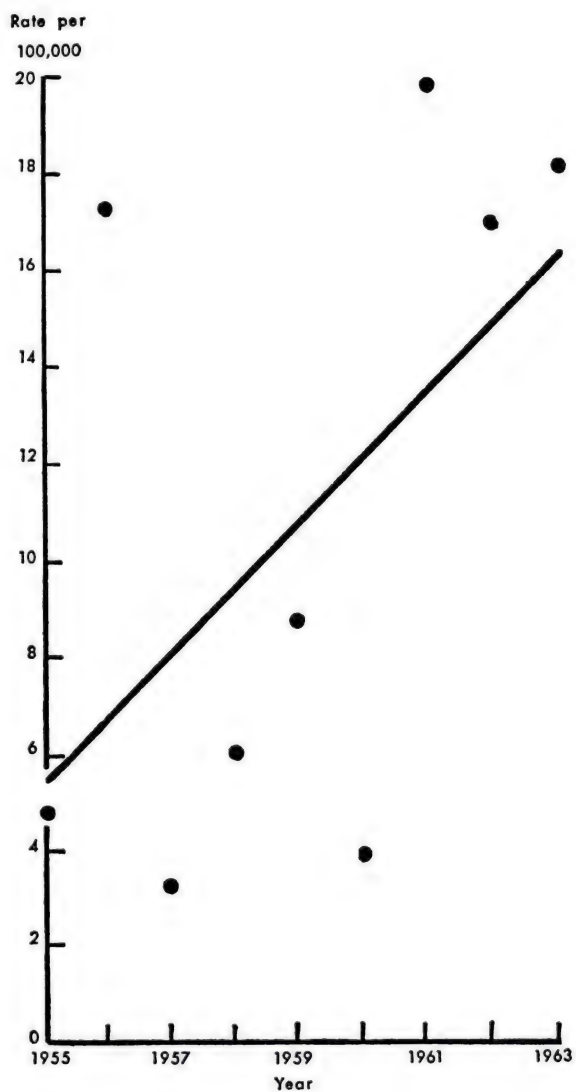
SUICIDE AND SELF - INFLICTED INJURY FROM POISONING
BY ANALGESIC AND SOPORIFIC SUBSTANCES 1955 - 1963,
MALES AGED 40 - 44

RATE PER 100,000 MALE POPULATION AGED 40 - 44



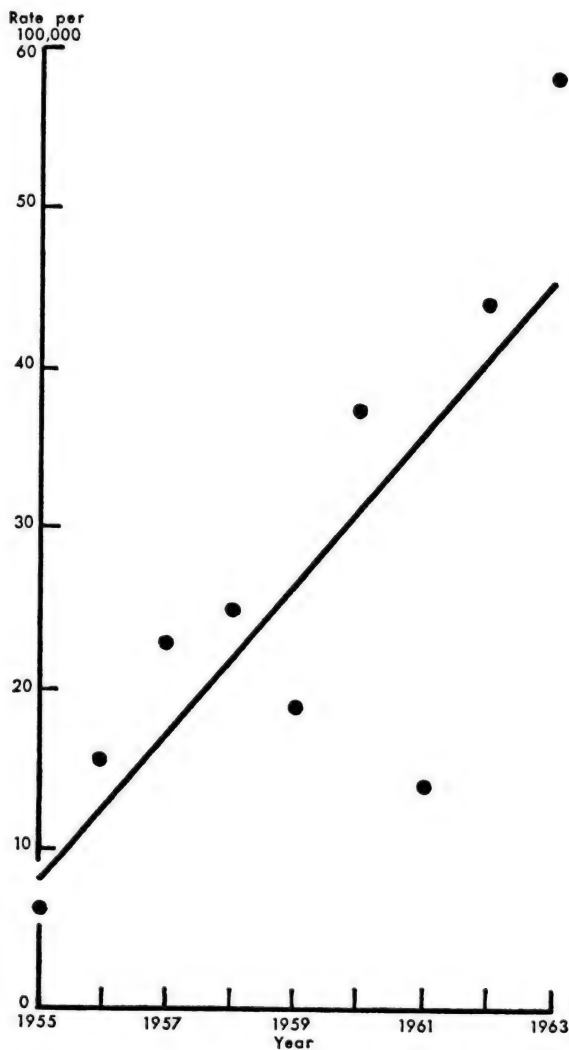
ACCIDENTAL POISONING BY BARBITURATES 1955 - 1963,
FEMALES AGED 45 - 49

RATE PER 100,000 FEMALE POPULATION AGED 45 - 49



SUICIDE AND SELF - INFLICTED INJURY FROM POISONING
BY ANALGESIC AND SOPORIFIC SUBSTANCES 1955 - 1963,
FEMALES AGED 45 - 49

RATE PER 100,000 FEMALE POPULATION AGED 45 - 49



SUICIDE RATES IN RELATION TO DISTRICTS (1966)

(Population figures are taken from table 2 (urban area figures), page 15, of the *Monthly Abstract of Statistics*, September 1967, and adjusted so as to include only the population aged 15 years and over.)

—				Males	Females	Total
Auckland—						
Population	..	..	..	182,864	184,375	367,239
No. of Suicides	..	..	..	37	27	64
Rate/100,000 pop.	..	..	..	20.23	14.64	17.43
Wellington (Includes Hutt area)—						
Population	..	..	..	94,217	94,996	189,213
No. of Suicides	..	..	..	25	15	40
Rate/100,000 pop.	..	..	..	26.53	15.79	21.14
Christchurch—						
Population	..	..	..	82,444	83,125	165,569
No. of Suicides	..	..	..	22	12	34
Rate/100,000 pop.	..	..	..	26.68	14.44	20.54
Dunedin—						
Population	..	..	..	36,253	36,552	72,805
No. of Suicides	..	..	..	7	7	14
Rate/100,000 pop.	..	..	..	19.31	19.15	19.23
Hamilton—						
Population	..	..	..	21,211	21,387	42,598
No. of Suicides	..	..	..	5	2	7
Rate/100,000 pop.	..	..	..	23.57	9.35	16.43
Palmerston North—						
Population	..	..	..	16,375	16,511	32,886
No. of Suicides	..	..	..	4	3	7
Rate/100,000 pop.	..	..	..	24.43	18.17	21.29
Invercargill—						
Population	..	..	..	15,342	15,488	30,830
No. of Suicides	..	..	..	3	1	4
Rate/100,000 pop.	..	..	..	19.55	6.46	12.97
Napier—						
Population	..	..	..	12,773	12,879	25,652
No. of Suicides	..	..	..	4	1	5
Rate/100,000 pop.	..	..	..	31.32	7.76	19.49
Wanganui—						
Population	..	..	..	12,740	12,845	25,585
No. of Suicides	..	..	..	1	1	2
Rate/100,000 pop.	..	..	..	7.85	7.79	7.82

—				Males	Females	Total
Hastings—						
Population	..	..	..	12,507	12,610	25,117
No. of Suicides	..	..	..	2	2	4
Rate/100,000 pop.	..	..	..	15.99	15.86	15.93
New Plymouth—						
Population	..	..	..	11,773	11,870	23,643
No. of Suicides	..	..	..	1	2	3
Rate/100,000 pop.	..	..	..	8.49	16.85	12.69
Rotorua—						
Population	..	..	..	11,073	11,164	22,237
No. of Suicides	..	..	..	2	1	3
Rate/100,000 pop.	..	..	..	18.06	8.96	13.49
Tauranga—						
Population	..	..	..	10,539	10,626	21,165
No. of Suicides	..	..	..	4	0	4
Rate/100,000 pop.	..	..	..	37.95	0	18.90
Whangarei—						
Population	..	..	..	9,839	9,920	19,759
No. of Suicides	..	..	..	3	1	4
Rate/100,000 pop.	..	..	..	30.49	10.08	25.18
Timaru—						
Population	..	..	..	9,305	9,382	18,687
No. of Suicides	..	..	..	0	2	2
Rate/100,000 pop.	..	..	..	0	21.32	10.70
Gisborne—						
Population	..	..	..	9,272	9,348	18,620
No. of Suicides	..	..	..	1	4	5
Rate/100,000 pop.	..	..	..	10.79	42.79	26.85
Nelson—						
Population	..	..	..	9,205	9,281	18,486
No. of Suicides	..	..	..	2	2	4
Rate/100,000 pop.	..	..	..	21.73	21.55	21.64

ATTEMPTED SUICIDE

In 1963, 244 suicides occurred in New Zealand and in the same year 944 attempted suicides were treated in hospital. As Professor Ironside has said of the statistics for 1960, these are minimal figures.³⁰ By comparison with overseas studies of the rates of suicide to attempted suicide,

³⁰N.Z.M.J., Vol. 63/388. Dec. 1964.

the latter appears to be greatly underestimated. The lowest rate in overseas studies is 3 : 1 which would be lower than the New Zealand rates for 1963. The highest rate suggested is in the region of 100 : 1,³¹ but this figure relates specifically to adolescent attempts.

Ironsides points to the dismaying fact that a fair proportion of those known to have attempted or committed suicide have been in medical care at the time, or not long beforehand. One study of attempted suicide showed that 57 percent of cases were receiving treatment at the time; another showed that 3.5 percent of the suicides happened on the same day as the last visit to the doctor.

There may be a tendency to underestimate or overlook the suicidal risk of the individual patient. On the other hand, it is possible that the last visit to a doctor is a deliberate act to prove the futility of medical care and a final rejection of the last hope of life.

"What is of crucial clinical significance is the component psychopathological process of depressive affect, its intensity, control, and suppression, the "here and now" circumstances of the patient's life in the setting of which it has been aroused, and the personality and developmental antecedents in which it has been mobilised."³²

The person who attempts suicide can be partly understood as employing a counter-action to thanatophobia. He may be expressing a strong wish not to die, in association with a fantasy of being rescued from what to him is a life-threatening extremity. Or the brush with death and survival is the reward for having offered his life as an atonement.

It is certain that in all attempted suicides there are intrapersonal conflicts of a serious nature and many patients treated in hospital demonstrate long-standing and unrecognised disturbed mental states. These states are often associated with disturbed family relationships and with various types of loss. Some psychiatrists believe that everyone who intends to commit, or who attempts suicide, signals his intention of doing so before he takes action no matter how impulsive he is.

The *Lancet* of 17 October 1964 points out that while suicide is rare in childhood and early adolescence, suicidal attempts and suicidal threats are not rare below the age of 14, and are rather common among late teenagers. In New Zealand 13 children between the ages of 13 and 15 committed suicide in the 25 years up to 1964.³³ The peak age for attempted suicide is around 20 or 21. The rates of non-fatal to fatal suicide acts is much higher in the young than in the elderly.

Among attempted suicides, females vastly outnumber males, contrary to the ratio among suicides. This is true not only in New Zealand but also in most other parts of the world. In Sweden and London it has been noted that the lower income groups are grossly over-represented among

³¹Jacobziner, H., *Attempted Suicides in Adolescents*. J.A.M.A., Vol. 191, No. 1, Jan. 1965.

³²Ironsides, W., N.Z.M.J., Vol. 63/388. Dec. 1964.

³³In the two years 1966-67, four children aged 11, 14, 15, and 15 years committed suicide.

the suicidal attempts admitted to hospital. Such a finding is at variance with the usual class distribution among suicides, and there is reason to suppose that many cases in the higher income groups are "protected" from exposure. This may be true especially amongst adolescents, and reflects the feelings of failure, guilt, and disgrace in parents. No doubt the lower-income or less influential parents share the same feelings but are unable to control the situation.

The self-destructive tendencies of children and adolescents are usually much weaker than those occurring in later life; they are also weaker than the urges to be loved, recognised, and accepted. In every attempted suicide there is an appeal component—a cry for help—in dealing with such problems as sexual difficulties and hostile impulses aimed at parents.

The case of an 18-year-old illustrates many of these points, including sexual, religious, and family problems, and reveals previous distress signals. His first attempted suicide (by an overdose of barbiturates) occurred two months before the second. He was admitted to hospital on the first occasion and was on leave from hospital at the time of the second attempt—again by barbiturates. His girlfriend was pregnant. He was subject to headaches which increased in intensity until he was compelled to acts of violence. In one such episode he shot a bull and cut its throat. His parents were separated and he, along with several siblings, lived with his mother. His father, whom he hated, was living with another woman. At the time of his attempted suicides he was under Child Welfare supervision for breaking, entering, and theft. This misdemeanour was diagnosed as acting-out aggression; it was not done for personal gain.

There is little doubt that family disorganisation is the background to many attempted suicides, and an association often exists between attempted suicides and delinquency; each represents acting-out behaviour in an attempt to control the environment. Prediction of the specific form of the deviant behaviour appears to be most difficult, and it may remain for longitudinal cohort studies of human behaviour to suggest the possibility of such prediction. Both delinquency and attempted suicide in young people may be an appeal for the love and affection which they are justified in expecting but which they are not receiving.

Barbara Williamson³⁴ points out that the stage for attempted suicide is set where intervention is possible and warning is given, but not taken seriously. The social setting of the act usually favours survival—often in public places, or at home in the presence of other people who can be intervening agents. The effect of attempted suicide may be temporary hospital treatment. Perhaps the attempt may draw attention to overlooked symptoms or act as an alarm signal of mental illness. If no notice is taken of the warning signal and the environment remains unchanged, the act may be repeated, possibly with greater violence.

³⁴Williamson, B., *Suicide*. Unpublished Essay. Department of Justice.

Most attempted suicides involve an element of conscious risk. A prisoner some years ago decided that mental hospital was preferable to prison. He indulged in various forms of bizarre behaviour in order to have himself committed. He was unsuccessful.

One night the duty officer found him hanging unconscious in his cell. He was revived and sent to a mental hospital. He told later how he had heard the officer's footsteps coming along the prison wing and had timed his hanging for the moment or two before the officer looked through the peep-hole in the door. But in a recent suicide, as no doubt in many others, the timing was faulty and death occurred.

Very few suicides occur in New Zealand prisons. Only one was recorded over a period of 10 years in Auckland Prison. But slashed wrists and the swallowing of sharp instruments are not uncommon and again are hysterical and attention-gaining devices. It may well be that a prisoner's death-wish is already satisfied by being in prison, which can be regarded as a kind of self-entombment and social death.

A Brooklyn College student counsellor, Dr Norman Kiell, deals with the suicidal impulses of famous persons in adolescence—St. Augustine, Napoleon Bonaparte, Hazlitt, J. S. Mill, Trollope, Beatrice Webb, Gandhi, and Graham Greene. Greene had run away from school and had been referred to a psycho-analyst. His psycho-analysis, Greene says, left him wrung dry, bored to an intolerable depth. "In this mood and to escape his insufferable boredom, Greene played Russian roulette with himself. But even the sense of jubilation and "the crude kick of excitement" he got from pulling the trigger palled on him after the fifth try, and he put the revolver away in the corner cupboard. 'One campaign was over, but the war against boredom had to go on'."³⁵

Kiell asserts that in adolescence there are ambivalent feelings of the gloriousness and the futility of life—a deep awareness of the injustices of the world. Often there is disappointment in loved persons, a breakdown of parental idealisation, and hence a morbid preoccupation with death.

An English study has shown that the rate of suicide is higher among university students than in corresponding age groups in the general populations, especially in the old universities of Oxford and Cambridge. Sir Alan Rook says that children of highly intellectual and very ambitious parents form a higher proportion of entrants at these two universities.³⁶ The pressure to do well in a competitive field is a potent cause of anxiety.

Difficulties in the transition from school child to student, from regimentation to comparative freedom in reading and study, are other factors leading to anxiety and anomie. The student population also contains an excess of unmarried individuals—a suicide prone population.

³⁵Kiell, Dr N., *The Universal Experience of Adolescence*. International Universities Press, Inc., p. 714 seq.

³⁶Rook, Sir Alan, *Student Suicides*, B.M.J., 1959, 599–703.

Students have been described as "old, laden with responsibilities, care and worries". Perhaps society expects too much from them, such as steady, wise working during the turbulent final phases of social maturation, and too little because they are still, to a degree, pupils, unable to play some part in the community, as do their contemporaries.

CASE HISTORIES

The following case histories are derived from a study of 141 files from one metropolitan area over a period of one year:

Females Aged 13-19 Years

In all, 18 cases from the age group were studied. The youngest, aged 13 years, was living in a Salvation Army home while her father earned enough money to buy a house. A 14-year-old suffered from "adolescent instability"—the result of a break in her romantic relationship with a boy of 17. There was considerable domestic disharmony between her parents, and her mother had received treatment for a nervous breakdown. Both these children took an overdose of barbiturates.

Four girls were 16 years old. None had "complete" or satisfactory homes. In one case the father had left because of the mother's nagging habits. After he left, the mother turned her vitriolic attention on the girl and was the cause of her losing jobs. This girl had eight months previously attempted suicide by jumping from a fire escape in a Child Welfare receiving home. She had a boyfriend but was afraid of having children, even when married. She was described as suffering from hysteria and adolescent instability.

The second 16-year-old had the same diagnosis. Her mother allowed her no privacy and accused her of associating with undesirable boys. The father was not mentioned in the case notes.

Another girl was pregnant—she had been living with her boyfriend for four weeks and said she saw no wrong in being pregnant. She had come from a broken and unsettled home and did not meet her natural father until the year of her attempted suicide. On the day of the attempt she had quarrelled with her boyfriend, was slightly drunk, and took an overdose of soluble aspirin.

The fourth girl of the same age was suffering from reactive depression—her mother had died one year before, and she was living alone with a father who drank heavily and was inconsistent and unfair in his dealings with her. She expressed conflict between her disapproval of her father's drinking and his intolerance, and her sense of duty to him as her father. At the time of her attempted suicide she was in a state of pre-menstrual depression.

Most of the adolescent females were suffering from reactive depression related to broken romances or pregnancy. A 19-year-old Maori nurse had been living with her mother who died when she was 11 years old. She had never known her father. She left home on the death of her mother and tried to jump over a cliff. In childhood she had suffered

severe burns on her hands and she thought the skin grafts looked so repulsive that she would never get married. She had an illegitimate baby four months before her attempted suicide and the child was adopted out. She became involved with a married man and thought that she was again pregnant whereupon she took an overdose of a common drug.

The other cases are variations on the same theme apart from two girls who, in addition to romantic entanglements, were found to be suffering from schizophrenia. All but two of the adolescent females used barbiturates, the exceptions being one who swallowed shampoo and another camphorated oil. One had previously cut her wrists. Six of the 18 adolescent girls had previously attempted suicide. Two of the group were married. One, 18 years old and six weeks pregnant, had had an argument with her husband. She said she took camphorated oil to scare him. The other married girl was of low intelligence and had marital and financial worries. She suspected her husband of interfering with another girl. Three months after her attempted suicide she was again admitted to hospital, suffering from hyperemesis.

Of the 18 homes of these adolescent girls, at least 10 were deficient by reason of death, divorce, disharmony, or ill-health. In five cases the girls were single and pregnant or had given birth to an illegitimate child and in each case had been deserted by her lover. Sixteen of the 18 were New Zealand-born Europeans.

Male Adolescents

Eight males aged from 17 to 19 years attempted suicide. Again reactive depression following quarrels is prominent, and in one case a lad of 17 was in trouble with the police over money missing at work. He was also a diabetic.

One youth of 19 had been a ship deserter and had been deported from New Zealand. He first attempted suicide to avoid deportation. After returning to England he and his wife saved money and came back to New Zealand. She had since attempted suicide, and he had suffered from trance-like episodes for several years and had been a patient in mental hospital. Not long after their return to this country they had an argument and he cut his wrists. He signed himself out of hospital after five days.

A student had lost his brother by death three months before his attempted suicide. As a result he suffered considerable depression and, despite a good record at school, his university work deteriorated. He took an overdose of a drug which can be purchased without a doctor's prescription. He showed vague signs of schizophrenia.

Four youths formed associations with, or married, equally unstable persons. A youth of 18 had a quarrel with his fiancée, who was herself well known to a hospital psychiatric clinic, and took 36 nerve pills to frighten her. He was an adopted child and at the time of his attempt at suicide he was on probation, following a term in Borstal. Two youths had previously attempted suicide.

Females Aged 20-24 Years

Twenty-eight women aged 20-24 were treated in hospital following attempted suicide. Sixteen were single, one was divorced, and one separated from her husband. At least 10 had given previous warnings of suicidal intent, five of them having received psychiatric treatment.

One nurse aid had had many previous admissions for schizophrenic illness. Another religious fundamentalist with an obsessive personality suffered from reactive depression related to conflict over ethics and religion. Paralysed by indecision over such simple matters as washing dishes, she varied between elation and extreme depression. Always a perfect child and well behaved, she became depressed in adolescence and deteriorated when her father objected to her marrying under the age of 21. She was for a time a voluntary boarder in mental hospital and attempted suicide. She then rang her husband, who worked nearby, and he was able to save her life.

The 20-24-year-old female group was numerically the largest, and almost all the cases showed familiar background factors. One woman aged 20 had made two previous suicidal attempts. She had for some years been emotionally unstable and was an epileptic. At the age of 16 years she married a 35-year-old alcoholic—a marriage which lasted for only a few weeks. She took her later overdose of drugs in a coffee bar where "she could be alone, unseen and die where no one could find her." Inevitably, she was found. At the time her divorce was proceeding and she had quarrelled with her parents.

Another single woman of the same age had quarrelled with her boyfriend and was suffering from depression. Following bitter quarrels and infidelity, her mother and father had separated when their daughter was five years old. The daughter had always fought with her mother (who alienated her by her sarcasm) and she had made a previous attempt three or four years earlier with acute alcoholic intoxication. Before the later attempt she had run away from home.

Twenty-six of the patients took overdoses of barbiturates, one cut her wrists and one, at her third illegitimate pregnancy, attempted suicide with coal gas. Almost all the attempts coincided with an unhappy love situation, pregnancy, or desertion.

Females Aged 25-29 Years

Thirteen females who attempted suicide were aged from 25 to 29, all but four were married and two were living in a *de facto* relationship. One of the latter was the illegitimate child of a 15-year-old mother. She was brought up by her grandmother and had a lonely childhood. She married her employer when she was 18 and he was 42. She said she had never loved her husband and married him out of pity. Two months before her attempted suicide she became intimate with another man, and her mother informed her husband. The patient's health was never good and she had financial worries.

A Dutch immigrant slashed her wrists while suffering from reactive depression. She had been drinking and was very depressed because her boyfriend wished to discontinue their affair. This woman had developed pituitary hypofunction at the age of 12. Only two days before the attempted suicide her widowed mother had arrived in New Zealand. (Five of this group were immigrants.)

One woman had been married five weeks and had a quarrel with her husband over her expected baby, which was not his. She had two other illegitimate children aged five and two. Her mother had died when she was nine and her father had remarried three years later. The patient did not get on amicably with her stepmother.

Puerperal psychosis was present in one case and menorrhagia in another. Lack of communication between husband and wife, guilt feelings over infidelity, and jealousy and resentment at domestic role were factors in other cases. In two instances depressive psychosis was diagnosed.

As the age-groups become older, domestic disharmony, loneliness, depression, and ill-health become more prominent. Many older patients had had numerous hospital admissions for physical or mental illness.

Forty-two women had received previous psychiatric treatment or had threatened or attempted suicide because of depression, hypochondriasis, senility, or hypertension. A further 20 women had had miscarriages or were unable to have children.

Race—All the female attempted suicides appeared to be New Zealand European except the following:

Maori	..	3	Rumania	..	1
Holland	..	4	Italy	..	1
England	..	3	Yugoslavia	..	1
Hungary	..	1			

Religious Denomination

Church of England	..	35
Roman Catholic	..	25
Presbyterian	..	11
Methodist	..	5
"Protestant"	..	3
Salvation Army	..	3
Baptist	..	2
Mormon	..	1
Orthodox	..	1
Unspecified	..	5

Occupations—Little information is available concerning the occupations of the husbands of married women. The only figure of note among the single women is the fact that seven of them were nurses or nurse aides.

SPECIFIC CASES

Two cases of attempted suicide are set out below:

Case 1

A 36-year-old married housewife was admitted to hospital following attempted suicide by an overdose of barbiturates. She had been in one religious orphanage as a baby until she was seven years old; then she was moved to another where she attended school to the age of 12 years and worked until she was 17. In one of the orphanages, bedwetters were given a cold bath and made to stand at breakfast with the wet sheet wrapped round their necks. She was one of them.

At the age of 22 she had an illegitimate daughter. She became married at 24 and kept her daughter. There were six children of the marriage, and three years before her attempted suicide her Fallopian tubes were tied. From that time she became frigid.

She had traced her own mother after leaving the orphanage. (By this time her mother had married and had two children.) Her mother's husband was unaware of the patient's existence, and probably because of this her mother disowned her and would give her no help—"You had a good upbringing, didn't you!"

The patient's mental state deteriorated six months before her attempted suicide. Her bitterness towards her mother and her rejection of her husband led to deepening depression. Less than a month after her discharge from hospital she was again admitted suffering from depression.

Case 2

A 35-year-old divorcee was admitted following an overdose of drugs and also suffering from reactive depression. She had two children—a boy of 14 and a girl of 16—and had quarrelled with her daughter on the night of her admission.

She had divorced her husband 10 years previously because he had been intimate with an alcoholic woman to whom the patient had given hospitality out of pity. Her husband was now married to this woman, and was bringing an action to end the payment of maintenance to the patient.

The patient was finding her 14-year-old son a problem, and suspected that her 16-year-old was sleeping with her boyfriend. To add to her troubles, she suffered from tonsillitis and occasional quinsy.

ATTEMPTED SUICIDE OF MALE ADULTS

The pattern of 38 male attempts at suicide is broadly similar to that of females, but the numbers are too small to be of real significance.

Domestic discord, or its result, appeared in most of the male cases. Where the patient was divorced or separated, he had maintenance troubles. A 50-year-old divorced man wanted to remarry but could not afford to do so because of maintenance. He developed generalised dermatitis.

Another man who had suffered a cerebral haemorrhage two years previously, complained that he could not sleep. "I go to close my eyes, and I feel as if I'm kicking and attacking my wife, but evidently I haven't moved."

Alcohol was a factor in at least six of the cases of domestic discord. One man whose wife and family wanted to leave him because of his alcoholism took a dose of arsenic, but survived. In addition, two of the domestic cases involved persons with criminal records. A diabetic threatened to murder his wife and kill himself.

A history of psychosis occurred in 10 cases—delusional insanity, severe depression, schizophrenia, hysterical psychopathy, and manic-depression. In at least two other cases there was extreme depression bordering on the psychotic.

Alcoholic depression was present in two cases where suicide was attempted with a disinfectant and with carbon monoxide.

Homosexuality, with attendant guilt feelings and self-hate, were evident in two cases. In one instance a 34-year-old had lost his father two months previously; his mother had died when the patient was six years old. Because of his homosexuality, he had attempted suicide at the age of 24 years. He had received a convent education from the age of four until he was 17. Whenever a problem arose in his life, his father tended to deal with it by giving him money. He lost heavily in a coffee-bar venture. He had no friends and when he wrote to pen pals, received no replies. Whenever he mentioned suicide his father gave him more money. Five months before his latest attempt he developed a duodenal ulcer. He attempted suicide by inhaling carbon monoxide.

The other homosexual was 22 years old and suffered from extreme depression and feelings of guilt. He wrote a suicide note: "I've been a misfit in the family and always feel that way. I rate people too high."

Only one of the male patients died in hospital. At least one other committed suicide within a few weeks after discharge.

Method—Six men cut their wrists or stabbed themselves. One drove his car into a power pole, another jumped down stairs, and a third was found hanging. Twenty-six took overdoses of various barbiturates, and three inhaled carbon monoxide.

Religion—Religion was stated in only 25 cases. Eight were Church of England, eight Roman Catholics, four Presbyterian, one Mormon, one Ringatu, and one Salvation Army.

Race—Four were described as Maoris; three were immigrants from the United Kingdom, one was Hungarian, one Dutch, one Polish, and one New Zealand-born Chinese. The remainder, presumably, were New Zealand European.

STATISTICAL ANALYSIS OF DATA ON SUICIDE AND ATTEMPTED SUICIDE

The Department is indebted to Mr H. S. Roberts, of the Applied Mathematics Division, D.S.I.R., Wellington, for his help in this analysis.

Question 1

Is there any change in the total number of suicides per 100,000 population for the 15-plus age group for the years 1940-64, (a) for men, (b) for women?

Is there any change in the pattern for men and women?

- (a) There is a slight decrease in the number of total suicides per 100,000 for men, but no greater decrease than would be expected by chance.

$$(r = 0.18 \quad p > .40 \quad \text{Years} = 25 \quad \text{D.F.} = 23)$$

- (b) There is a slight increase in the number of total suicides per 100,000 for women, but no greater increase than would be expected by chance.

$$(r = 0.26 \quad p > .20 \quad \text{Years} = 25 \quad \text{D.F.} = 23)$$

Although suicides by women are increasing slightly and by men decreasing slightly, the difference between men and women is no greater than would be expected by chance.

$$(p = .20 \quad \text{Years} = 25 \quad \text{D.F.} = 46)$$

Question 2

Is there any change in the total number of attempted suicides and self-inflicted injuries treated in public hospitals over the period 1955-1963, (a) for men, (b) for women? Is there any difference in the pattern of change between (a) and (b)? The age ranges from 10 to 85+.

- (a) The rate is increasing for men, significantly greater than would be expected by chance.

$$(r = 0.69 \quad p = 0.05 \quad \text{Years} = 9 \quad \text{D.F.} = 7)$$

- (b) The rate is increasing for women, significantly greater than would be expected by chance.

$$(r = 0.84 \quad p = 0.005 \quad \text{Years} = 9 \quad \text{D.F.} = 7)$$

The difference between the rates of increase for men and women is significantly greater than would be expected by chance.

$$(p = 0.04 \quad \text{Years} = 9 \quad \text{D.F.} = 14)$$

Question 2A

Individual modes of attempted suicide. All figures are per 100,000 population.

(i) Is there any change in the total number of poisonings by analgesic and soporific substances treated in public hospitals from 1955 to 1963? Age range 10-85+.

(a) Men. Yes, significantly increasing.

($r = 0.73$ $p = 0.03$ Years = 9 D.F. = 7)

(b) Women. Yes, significantly increasing.

($r = 0.86$ $p = 0.003$ Years = 9 D.F. = 7)

(c) Men and Women. Yes, significantly different.

($p = 0.02$ Years = 9 D.F. = 7)

(ii) Is there any change in the total number of poisonings by other solid and liquid substances treated in public hospitals 1955-1963? Age group 10-85+.

(a) Men. Increasing, but not significant.

($r = 0.61$ $p = 0.09$ Years = 9 D.F. = 7)

(b) Women. Increasing, but not significant.

($r = 0.08$ $p = 0.85$ Years = 9 D.F. = 7)

(c) Men and Women. No significant difference.

($p = 0.50$ Years = 9 D.F. = 14)

(iii) Is there any change in poisoning by gases in domestic use treated in public hospitals, 1955-1963? Age group 10-85+.

(a) Men. Increasing, but not significant.

($r = 0.19$ $p = 0.63$ Years = 9 D.F. = 7)

(b) Women. Increasing, but not significant.

($r = 0.27$ $p = 0.48$ Years = 9 D.F. = 7)

(c) Men and Women. No significant difference.

($p = 0.84$ Years = 9 D.F. = 14)

(iv) Is there any change in the use of firearms and explosives among patients treated in hospital? Age range 10-85+.

(a) Men only—a decrease, but not significant.

($r = 0.37$ $p = 0.31$ Years = 9 D.F. = 7)

(v) Is there any change in attempted suicides treated in hospital—by cutting or piercing instruments? Age range 10-85+.

(a) Men. Not a significant increase.

($r = 0.29$ $p = 0.45$ Years = 9 D.F. = 7)

(b) Women. Not a significant increase, but almost.

($r = 0.66$ $p = 0.055$ Years = 9 D.F. = 7)

(c) Men and women. No significant difference.

($p = 0.60$ Years = 9 D.F. = 14)

The numbers of those attempting suicide by other means were too small to be analysed.

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Chapter 4

SEXUAL OFFENDING

INTRODUCTION

Sexual instinct is common to all animate beings. Man is distinguished from animal by the ability he develops to control and modify his instincts. The ability may differ in strength and intensity from individual to individual. In our society, the normal adult person expresses his sexual instinct through genital intercourse. The object is usually a person of the opposite sex and of about the same age.

Where sexual deviation occurs, it is the object and the mode of expression which are at fault rather than the basic instinct. In the interests of protecting society and its accepted morality, certain deviant behaviour has been declared criminal. However, the definition of what perverted behaviour endangers society is not universally accepted or applied. Behaviour which is legal in one country may be illegal in another. Thus, in general terms, the sexual offender is one whose sexual conduct is unacceptable to the society in which it is committed.

In New Zealand, the main sexual offences are rape, incest, unlawful sexual intercourse (i.e., with girls under 16 years), homosexuality, indecent assault, pedophilia, and obscene exposure. In the stricter interpretation of the term many other offences may have sexual significance which is not at first apparent. Not all of these offences could be termed deviant. For example, some instances of theft are attempts to satisfy a fetish, and some convictions for disorderly behaviour may be against transvestites. In much offending it may be possible to find sexual connotations.

CLINICAL COMMENTS

A study by three American doctors, Brancale, Ellice, and Doorbar, led them to the following conclusions—¹

“Sex offenders may be divided into five major groupings:

- (a) “Normal” sex offenders may be said to be reasonably well adjusted, or at least sexually non-disturbed individuals who participate in sex acts, such as coitus with an under-aged partner or

¹*American Journal of Psychiatry*, Vol. 109, page 17.

adultery, which are legally impermissible but are not abnormal or pathological. "Normal" sex offenders may also include individuals who occasionally, particularly under the influence of alcohol, engage in "abnormal" or "perverted" sex acts (e.g., homosexuality), but who do not habitually or exclusively derive satisfaction from such acts. In this category too are most of the offences defined as rape.

- (b) Sexually deviated but psychiatrically non-deviated offenders may be said to be individuals who regularly or frequently engage in "abnormal" sex acts (e.g., homosexuality or sex acts with children), but who remain sufficiently well integrated and emotionally stable to pursue their aberrant behaviour without getting into trouble with society.
- (c) Sexually deviated and psychiatrically deviated offenders may be said to be individuals who engage in "abnormal" acts (e.g., exhibitionism), and who do so in a repetitive, compulsive, or otherwise emotionally disturbed manner, and who usually keep getting into difficulties because of their non-integrative sex behaviour.
- (d) Sexually non-deviated but psychiatrically deviated offenders may be said to be individuals who engage in "normal" sex acts but who do so in bizarre and non-integrative ways that are socially repulsive, and that sooner or later get them into official difficulties; or they may be individuals who engage in abnormal sex acts as a by-product of their general disturbance rather than because of any specific sex disturbance. Thus psychotic or brain damaged persons who masturbate in public or walk naked in the streets may be psychiatrically, but not necessarily sexually, disturbed.
- (e) Inadequate and mentally subnormal personalities."

Most convicted offenders come within the "normal" groupings; a sizable proportion come within the sexually and psychiatrically deviated grouping; and a small proportion come within the sexually non-deviated but psychiatrically deviated grouping. Most sex offenders who are not convicted or who rarely get into official difficulties, fall either in the "normal" or in the sexually deviated but psychiatrically non-deviated group. These individuals, being sufficiently well integrated, may continue to commit offences like homosexuality or peeping without being apprehended and convicted. And even when they are apprehended, they do not present serious psychiatric problems.

A psychiatrically deviated sex offender is often a severely neurotic or borderline-psychotic individual who is intensely insecure and non-integrated, who has never gained any appreciable poise, social courage, or emotional stability, and who tends to be seriously disturbed not only in his sex development but in virtually all aspects of his personality.

Sexually and psychiatrically deviated offenders include a small proportion of so-called "psychopaths", a much larger proportion of neurotics, and a sizable proportion of borderline-psychotics, psychotics, and brain-damaged individuals.

Two important types of convicted sex offenders may be termed the compulsive neurotic, and schizoid or borderline-psychotic type. The compulsive neurotic is frequently an extremely inhibited person who now and then is compelled to react against his own inhibition and to behave in what seems to be an impulsive but actually is a compulsive manner. He explodes because he abnormally holds himself in most of the time.

An example is the case of R.F. He was one of three children and was born in 1924. His parents separated when he was a child and he had little to do with his father thereafter. In 1941, when he was nearly 17, he appeared before the Children's Court on three charges of indecent assault on the children of customers who came to the grocery business where he worked. He was placed under Child Welfare supervision for one year.

In the following year—1942—he was found guilty of attempted rape on a girl aged 10, and was sentenced by the Supreme Court to Borstal Detention. Two years later he married, and he kept out of trouble until 1953 when he was found guilty of assault causing actual bodily harm and sentenced to six months imprisonment. In this assault he appeared at the door of a house wearing a gas mask and an oil-skin coat buttoned to the neck. He attacked the housewife who came to the door, took her by the throat and beat her. She ran down to the basement, where he followed her and beat her again. His excuse was over-work and alcohol.

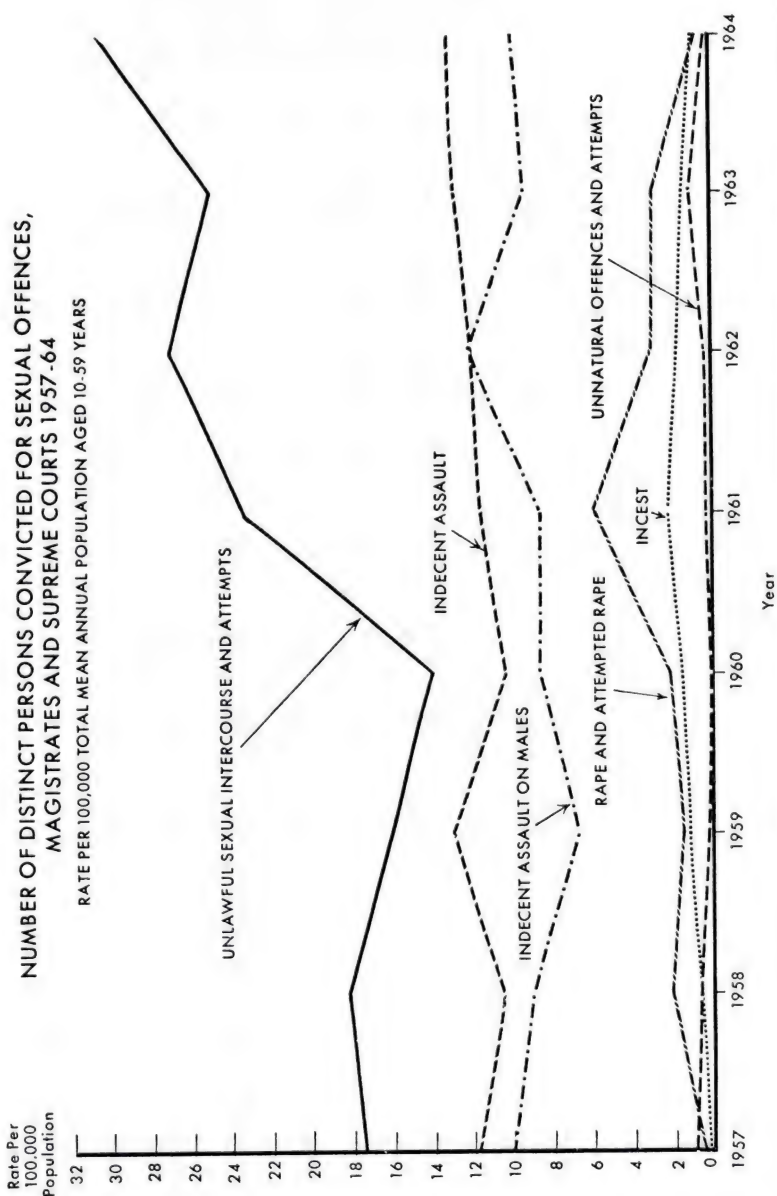
In 1955 he was again found guilty of assault causing actual bodily harm. On this occasion, while driving a truck, he passed a car driven by a woman, drew up and stopped her on the pretence that one of her back tyres was flattening. As soon as she opened the door of her car, he took her by the throat and hit her on the head with a bottle. She managed to kick him in the groin and to shut the car door on his fingers, whereupon he ran away. For this attack, he was sentenced to two years imprisonment. In 1959 he was found guilty of assault with intent to commit rape and received a sentence of three years imprisonment.

In cases of repeated sexual offending it is obviously important to anticipate what the offender might do as well as to judge him on the basis of what he has done. If he is sufficiently disturbed, or is likely to commit other sex offences with serious social implications, there should, perhaps, be legislative authority to place him in a suitable mental institution for treatment and hold him there, without any minimum or maximum sentence, until the staff of the institution feels that it is safe for him to return to the community. Sex offenders who are found not to be psychiatrically deviated should be returned to the Court for normal sentence.

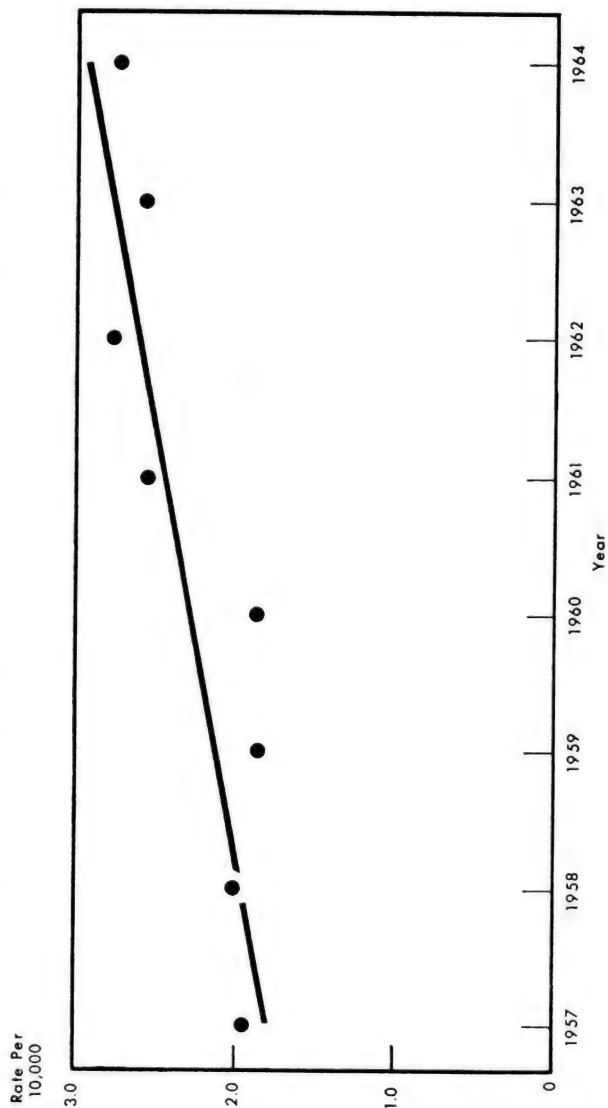
STATISTICS

TABLE 1
CONVICTIONS FOR SEXUAL OFFENCES 1957-1965

Offence	Male Population 10-59		735,100		755,390		755,910		784,830		802,580		823,620		840,900		860,070		878,930	
			1957		1958		1959		1960		1961		1962		1963		1964		1965	
Unnatural offences and attempts	5 0.7	4 0.5	4 0.5	1 0.1	..	..	..	..	2 0.2	2 0.2	2 0.2	2 0.2	9 1.1	9 1.1	2 0.2	2 0.2	..	..
Incest	1 0.1	4 0.5	4 0.5	9 1.2	12 1.5	12 1.5	12 1.5	18 2.2	18 2.2	15 1.8	15 1.8	13 1.5	13 1.5	9 1.0	9 1.0	12 1.4	12 1.4	..
Rape	2 0.2	7 0.9	7 0.9	6 0.8	5 0.6	5 0.6	5 0.6	44 5.5	44 5.5	13 1.6	13 1.6	12 1.4	12 1.4	7 0.8	7 0.8	10 1.1	10 1.1	..
Attempted rape	1 0.1	10 1.3	10 1.3	5 0.7	12 1.5	12 1.5	12 1.5	3 0.3	3 0.3	11 1.3	11 1.3	11 1.3	11 1.3	1 0.1	1 0.1	11 1.2	11 1.2	..
Unlawful sexual intercourse and attempts	129 17.5	133 18.2	133 18.2	122 16.1	119 15.1	119 15.1	119 15.1	188 23.4	188 23.4	222 26.9	222 26.9	209 24.8	209 24.8	261 30.3	261 30.3	262 29.8	262 29.8	..
Indecent assault	86 11.7	80 10.5	80 10.5	98 12.9	81 10.3	81 10.3	81 10.3	93 11.6	93 11.6	100 12.1	100 12.1	108 12.8	108 12.8	112 13.1	112 13.1	112 12.7	112 12.7	..
Indecent assault on a male	74 10.0	69 9.1	69 9.1	51 6.7	68 8.6	68 8.6	68 8.6	68 8.5	68 8.5	100 12.1	100 12.1	78 9.3	78 9.3	84 9.8	84 9.8	96 10.9	96 10.9	..
All sexual offences rate per 100,000	40.0	41.0	41.0	38.5	37.6	37.6	37.6	52.0	52.0	56.0	56.0	52.0	52.0	55.0	55.0	57.0	57.0	..



PERSONS CONVICTED FOR SEXUAL OFFENCES, 1957-1964,
RATE PER 10,000 TOTAL MEAN ANNUAL POPULATION AGED 15 YEARS AND OVER

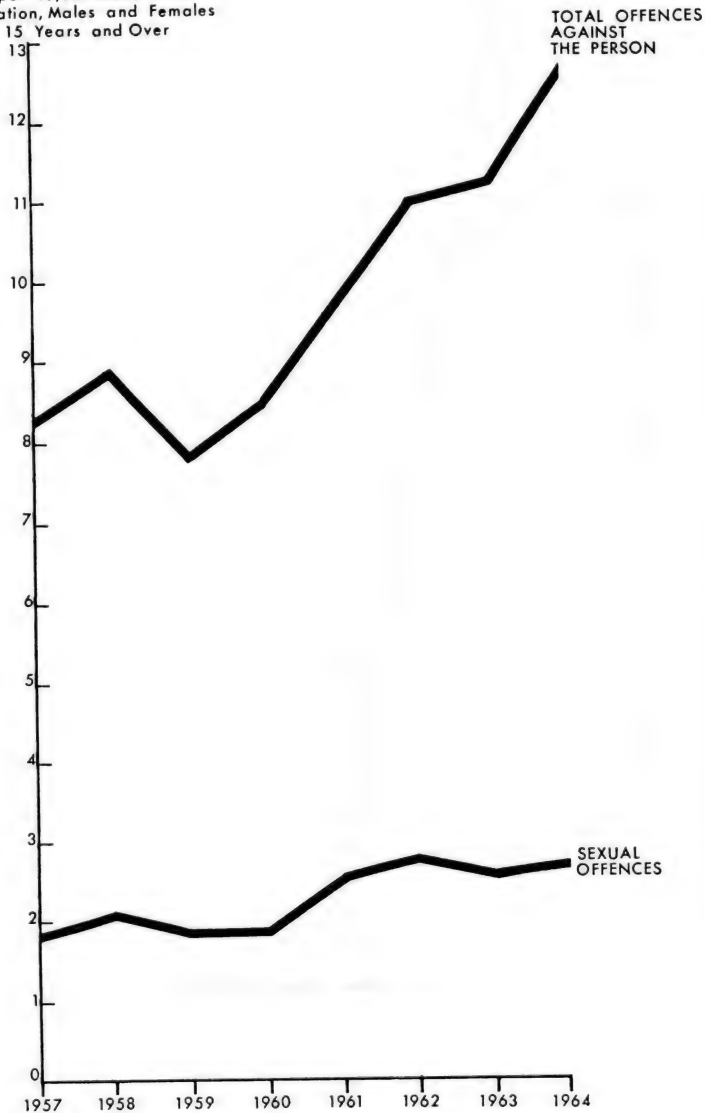


Graph II

PERSONS CONVICTED IN MAGISTRATE'S OR SUPREME COURTS
FOR SEXUAL OFFENCES AND PERSONS CONVICTED
FOR OFFENCES AGAINST THE PERSON, 1957 - 1964

RATE PER 10,000 TOTAL MEAN ANNUAL POPULATION,
AGED 15 YEARS AND OVER

Rate per 10,000 Mean Annual
Population, Males and Females
Aged 15 Years and Over



Graph III

The total of sexual offences per 100,000 population has been rising slightly over the last nine years with a slight decline in 1959 and 1960. There is a statistically significant upward trend, although it is not a very steep one.²

Table 1 gives the raw figures and the rate of offending in seven categories over the years 1957-65 inclusive. This table is based on the male population of 10 to 59 years inclusive and shows an increase of 17 distinct cases for every 100,000 members of the male population over a period of nine years. The year 1961 will be mentioned later in the context of gang rapes.

Graph I is a comparison of the rates of conviction for the various types of sexual offences. The same figures are given in tabular form in table 1.

The rate of convictions for Maori offenders is significantly higher for indecent assault and other sexual offences (rape, incest, unlawful sexual intercourse). For indecent assault on a male, the rate is not significantly lower.

RAPE

Section 128 of the Crimes Act 1961 gives the following definition:

"(1) Rape is the act of a male person having sexual intercourse with a woman or girl—

- (a) Without her consent; or
- (b) With consent extorted by fear of bodily harm or by threats; or
- (c) With consent extorted by fear, on reasonable grounds, that the refusal of consent would result in the death of, or grievous bodily injury to, a third person; or
- (d) With consent obtained by personating her husband; or
- (e) With consent obtained by a false and fraudulent representation as to the nature and quality of the act.

(2) Every one who commits rape is liable to imprisonment for a term not exceeding 14 years."

The section goes on to say that no man shall be convicted of rape in respect of his intercourse with his wife, unless at the time of the intercourse:

"(3) (a) There was in force in respect of the marriage a decree nisi of divorce or nullity, and the parties had not, since the making of the decree, resumed cohabitation as man and wife with the free consent of the wife; or

(b) There was in force in respect of the marriage a decree of judicial separation or a separation order."

²The figures for all graphs and tables are taken from the numbers of distinct cases in the Supreme and Magistrates' Courts, as given in the Statistics of Justice, 1957-65.

Subsection 1 (c) (relating to consent extorted by fear on reasonable ground that the refusal of consent would result in the death of or grievous bodily injury to a third person) is new. A former presumption as to incapacity on the part of a boy under 14 was removed from the law in 1961.

The offence of rape lies in having intercourse with a woman or girl without her consent, not against her will. Therefore, if a man has intercourse with a woman who is in a state of insensibility, knowing her to be in such a state, he commits rape. So, too, a man commits rape if he has connection with a woman when she is asleep, he knowing her to be so.

Age is an important consideration in cases of rape as a guide to the measure of resistance; thus an inference that there was no consent will be more readily drawn if the girl concerned is very young. The consent that is relevant is the consent at the time when the incriminating act occurs. It is no excuse that the woman previously consented, if the offence was afterwards committed by force, or against her will.

If consent is absent at the material time, subsequent forgiveness on the part of the woman, or her marriage to the accused, will not undo the crime. In law "the crime has been committed against the public, and it is not in the power of a private person to condone it".

The importance of this aspect of consent is apparent in the case of a man who in 1958 was convicted of rape and sentenced to four years imprisonment. He had raped his girlfriend who, the evidence suggested, had led him on, displaying a certain amount of passion and then refusing intercourse. The jury recommended mercy, probably because of this evidence.

The girl visited the offender in prison, corresponded with him, and declared her love for him. The inmate expressed his intention to marry her after his release. A legal expert commenting on the conviction at a later date, said: "This is an unusual and difficult case. It seems to me that the conviction and evidence are impeccable on legal grounds. The offence was committed. On the other hand it would probably have been better if the jury had acquitted him."

It was agreed that to make him serve his full sentence of four years would have been excessive in view of the circumstances and he was released after having served two years. He has since married the victim in the case, and they seem to have settled down to a reasonably satisfactory married life.

Subsection (d) of section 128 deals with personation of the husband. There must be *mens rea* on the part of the accused in the personation. In one reported New Zealand case (*R v Kake* [1960] N.Z.L.R. 595) the facts were unusual. At about 2 o'clock in the morning the offender entered the complainant's house and went into the room in which she was asleep. According to her evidence, he knelt beside her bed and began fondling her. At that time the complainant's husband was in jail, but she was expecting his release at any time. She was awakened by the

appellant's actions, and, in the poor light thought he must have been her husband. She said "Alan"—Alan being her husband's name—and in response to this obvious interrogation the appellant, she said, nodded his head. He then began kissing her and afterwards took off his shirt and got into bed with her. There was no conversation at this stage except that the complainant did ask repeatedly, "How did you get in?" The questions were natural enough, as she had locked the doors of the house before going to bed; but to none of them did she receive any answer.

The offender then proceeded to have complete intercourse with the woman. It was not disputed that the intercourse occurred with her full consent. The complainant's evidence, however, was that, in consenting to intercourse she was under the belief that her nocturnal visitor was her husband and that it was only after the act of intercourse was completed that she discovered that he was not. For the purposes of the appeal, it was not disputed that the woman's consent was given under the mistaken belief that the offender was, in fact, her husband. The case for the prosecution was that the appellant had had carnal knowledge of the complainant with her consent, but that such consent had been obtained by the appellant personating her husband, and that the act of intercourse was therefore a rape.

In delivering the judgment of the Court of Appeal, Sir Harold Barrowclough, C.J., said: "Personation will usually involve some physical act such as speech, or silence when speech is called for, or some other overt act such as—perhaps as in the present case—nodding one's head in response to an inquiry; but pretence, assumption of character, and investment with a personality all essentially involve mental processes and a jury cannot properly find that an accused person has personated someone else unless it has determined that was in the mind of the accused at the time when he performed the acts which are said to amount to personation. In short, to constitute personation there must be an intentional passing off in the character of another person, and, like any other intent required to be established, this can only be done by considering what was in the mind of the accused himself as evidenced by his overt acts".

The other new provision in the law related to the rape of a wife. Before the enactment of section 128 of the Crimes Act 1961 in its present form, there was no provision prescribing in what circumstances, if at all, a man could be convicted in New Zealand for the rape of his wife. Indeed, the definition of rape under section 211 of the 1908 Act was "the act of a male person . . . having carnal knowledge of a woman or girl who is not his wife. . . ." This definition makes it clear that under the 1908 Act a husband could not be convicted in New Zealand of rape, at least as a principal party; the Act, by its express language, had excluded relationships between husband and wife. In New Zealand the position is now clearly defined, and a man cannot be guilty of rape on his wife unless at the time of intercourse the provisions already quoted applied.

The law also deals with the difficulty inherent in a situation where the incidents complained of occurred only in the presence of the accused and his alleged victim and when only they are in a position to give a first-hand account of what took place.

In order to avoid the obvious difficulties in such a situation, two rules of evidence have been developed. First, the alleged victim's account of the matter may be supported by evidence that she made a complaint about the alleged occurrence shortly after it happened. Second, if the complainant's evidence is not corroborated, the jury must be warned that it would be dangerous to convict the accused on such unsupported evidence.

ATTEMPTED RAPE

An attempt to commit rape or an assault with intent to commit rape is punishable by imprisonment for a term not exceeding 10 years.³

PHYSICAL EVIDENCE

It will be obvious that the physical evidence in a case of rape is of the greatest importance. A study of the law and of the legal interpretation of the kind of force and amount of penetration necessary to constitute rape, shows that from the medico-legal point of view the physical signs vary in different cases. They may even be absent although the crime has been committed.

As Professor John Glaister says:⁴ "It is easy to conceive the possibility of legal commission of the crime without any physical evidence whatever being found on the body of the female to justify a medical examiner in doing more than reporting the negative facts. Since the slightest degree of penetration without emission constitutes the crime, no physical signs of defloration may be produced. Indeed, there may be no local evidence whatever of the juxtaposition of the male and female parts. Therefore the medical examiner is not justified in affirming, because no such physical evidence was forthcoming, that rape has not been committed.

"If evidence exists, the range of physical signs will vary according to the capacity for physical resistance. In the case of young children, females who have been drugged, or those who are in a state of unconsciousness from any other cause, the evidence of resistance will probably be absent, while the local signs of the accomplishment of the act are likely to be well marked; but even then the signs will depend upon whether or not the female has been accustomed to sexual intercourse. In cases of rape we must, therefore, distinguish between the general signs of physical resistance and the local evidence.

³S. 129, Crimes Act 1961.

⁴Glaister, J., *Medical Jurisprudence and Toxicology*, E. and S. Livingstone, 11th edition.

"Assuming that a healthy, vigorous young woman alleges that she has been ravished, the first thing the medical examiner must look for is evidence of the signs. If the woman has resisted to her uttermost, she will probably bear marks upon the body, face, neck, and limbs of a violent resistance, and probably also she will have inflicted injuries upon the body of her assailant. In such cases, therefore, the examiner should look for evidence of the signs of violence upon her body, such as wounds, bruises, or scratches. In the absence of these he should exercise, at first, a healthy scepticism as to the truth of her statement, unless she avers that she had fainted, been overcome with fear, or had been drugged, and her sexual parts bear evidence of interference.

"At the same time our experience has led us to the belief that this scepticism may be carried too far. There are unquestionably girls who become panic stricken when an attack of this kind is made upon them and are rendered incapable of offering serious resistance with the consequence that their bodies do not bear evidence of injuries such as might be expected from a severe struggle, while locally there may be all the expected signs of the accomplished act of penetration. In such a case, the acts and demeanour of the girl immediately after the alleged commission of the crime should be subjected to very critical investigation, as these may provide valuable evidence, corroborative or otherwise, regarding the alleged ravishing. In the case of children the examiner must not always expect evidence of physical resistance since frequently children are incapable of exercising sufficient resistance to provoke injury."

Professor Glaister goes on to give illustrative cases of examinations of the bodies, first of a girl aged seven, and then of a woman, and finally a case of a false charge of sexual assault. He discusses the question whether a healthy adult female can be raped by one man, and he says that there is no doubt that rape can be perpetrated in the case of a woman who has become exhausted by the resistance which she has offered, or when, on account of fear or injury, she has lost consciousness.⁵

"One should refrain, however, from expressing an opinion on this important point until careful consideration has been given to all the facts of the particular case. There have been many undoubted cases where a woman has been raped by an unaided man, despite the fact that so long as a woman retains complete possession of her senses it does not require great physical strength to deny sexual entry by apt disposition of her limbs. When the act has been accomplished, one is almost forced to the conclusion that the victim must have become physically exhausted and incapable of further resistance, or that from fear or injury there has been temporary loss of consciousness or there was marked disproportion in strength between the woman and her assailant, or that she finally became acquiescent for one reason or another to the sexual act. On the other hand it must not be forgotten that an assailant might have overcome her resistance by an appropriate disposition of her clothing.

⁵p. 423, op. cit.

When marked disproportion of age, size, and apparent strength in favour of the female are present, a charge of rape is often unsuccessful, because consent is likely to have been given. In most cases of this kind, however, such questions will probably not be asked of a medical witness, because the Judge and jury are able to form their own opinions. It is, of course, obvious that rape can be perpetrated quite easily when there is more than one assailant."

Glaister poses the question whether it is possible for a woman to be violated during ordinary sleep without her knowledge, and he gives the answer that it is highly improbable in the case of a virgin. "We should say that it is impossible because of the pain attendant upon a first coitus. In the case of women who are accustomed to sexual intercourse it is unlikely, although not impossible."

It is obvious from what Glaister has said that an early and detailed examination of the victim and the alleged assailant are of the utmost importance.

FACTORS IN RAPE

Clifford Allen⁶ discusses the classification put forward by Brancale, Ellice, and Doorbar. In doing so, he asks whether the apparently normal man who misbehaves under the influence of alcohol, and who is probably the most common type of rapist, is a normal person. He comes to the conclusion that this is improbable.

He contends that the fact that symptoms in neurosis or in homosexuality appear only under the influence of alcohol does not mean that the man is psychologically healthy but merely that his illness is capable of suppression, and he says that the same is true of the common form of rape which is carried out under the influence of alcohol.

He describes a typical story of a man who shows no evidence of abnormality, goes to a dance and takes a certain amount of alcohol. He sees a girl there and asks to be allowed to accompany her on the way home, or he merely follows her without permission. He may be allowed by the girl, if he accompanies her, to indulge in harmless love-making, kissing and so on; but when intercourse is refused, he knocks the girl down and assaults her. The man who follows the girl may simply approach her and attempt an assault without any preliminary approaches. No doubt in some cases the girl is somewhat to blame by permitting everything except intercourse when a man has become so excited as to be unable to control himself.

Certainly this story is like that of many Maori rapists, who in a moment when their inhibitions are released by alcohol commit the act of rape. In these cases cultural factors are significant. We might also include in the same group the youths who, in 1961 in particular, were guilty of gang rapes. Of those seen by psychologists and reported upon, many were not psychiatrically abnormal but the cultural factor was significant.

⁶Allen, Clifford, *A Textbook of Psycho-sexual Disorders*. Oxford University Press.

In one gang rape, where eight boys aged from 15 to 17 raped a girl in Auckland, six were from outside New Zealand. Two were Rarotongans, three were Samoans, and one came from Niue Island. It may well be that to these boys the act of rape was not as reprehensible as it is in the eyes of a European. The two oldest boys, both aged 17, were from Rarotonga and Niue respectively. In the other major multiple rape which took place in 1961, 11 youths raped a girl at Murupara; all these youths were Maoris.

Certain sexual offenders have psychopathic traits, and four or five such persons have repeatedly committed rapes in New Zealand.

One is M.B. He has been convicted of rape on three occasions. A psychiatric report says: "He speaks of himself as being very unsettled and supports this by reference to his unsatisfactory employment record and tendency to seek frequent changes of scene. Drink is blamed for many of his troubles though he denies being an 'alcoholic', and claims that he is able to control the habit when necessary. He insists, however, that as soon as he starts drinking he becomes irritable and aggressive. There are no features of psychiatric interest sufficient to warrant his committal to a psychiatric hospital. Such abnormality as he displays does warrant attention, but the difficulties associated with effective treatment are considerable, and there is no institution available at present which would meet the requirements of this type of personality disorder."

The last sentence illustrates one of the community's dilemmas in dealing with dangerous sexual offenders. Another such case is B.D. His adult offending began when at the age of 25 he was convicted of theft and sent to prison for one month. The following year he was released on one year's probation for a similar offence. Three months later he was convicted of indecent assault on a female and received a sentence of three years hard labour. During this sentence he was committed to a mental hospital for a period of about six months. Shortly after his release he was convicted of being a rogue and vagabond and was sentenced to three months imprisonment. Six months later he was found guilty of being in possession of a police identification card and of impersonating a police officer. This time he was sentenced to two months imprisonment. A month later he was convicted of rape and received a sentence of four years. Six years later he was convicted of obscene language and disorderly behaviour and a month later was found guilty of assault. He again committed rape in 1964 and was sentenced to five years imprisonment.

His offending had begun at the age of 17 when he was convicted in the Children's Court for the theft of money, clothing, jewellery, and motor goggles and he was committed to the care of the Child Welfare Superintendent. After a short period under supervision, he was committed on 24 August 1946, to Kingseat Hospital, being certified as a

medium grade imbecile, simple and childish in manner and conversation. He was discharged as unrecovered on 18 July 1954, having been on mental hospital leave since 1952.

Y.L.'s first sexual offence was indecent assault on a girl of nine years. In this offence he offered 5s. to the child, whom he had picked up in his car, if she showed him her private parts. He took down her pants and masturbated himself.

In 1949 he exposed himself obscenely to an 11-year-old girl who was approaching him on a bicycle. While serving a sentence on this charge, he was seen by a psychiatrist who said: "The cause of this exhibitionism would appear to be a fixation at an early level in psychosexual development. He is not committable, as there is no evidence of psychosis or mental defects. I would suggest that he be put on probation as soon as the parole board considers it advisable. He could then be admitted to a mental hospital to have the necessary psychotherapy. Treatment would require to be prolonged and, therefore, could not be adequately carried out at a psychiatric clinic."

In 1955 Y.L. had unlawful carnal knowledge of a girl aged 15 years and 5 months and was sentenced to six months imprisonment, to be followed by 12 months probation.

His next victim was a girl of 15 years. He used considerable violence to make her submit; then he committed cunnilingus upon her and finally raped her. His most recent offence was indecent assault on a girl of 11 years upon whom he again committed cunnilingus and masturbated himself against her. He was sentenced to preventive detention.

None of the repeating rapists can be adjudged normal. Society must be protected against them and, since there is no known cure at present for their condition, it may well be that the protection of society lies in indeterminate imprisonment. Whether a prison, a mental hospital, or some other experimental institution should be used is a matter for further discussion. But to such offenders, as to many other prisoners, the difference between institutions would be a purely theoretical matter—it would still be prison.

In any event, the interests of society must prevail. Clifford Allen says: "Even though I do not view the castration of [such a man] with enthusiasm, surely he could be permitted to have such heavy doses of stilboestrol, during his years in prison, so that it would be a long period before he recovered his sexual competence."⁷

In an English publication entitled *Sexual Offences*,⁸ there is a wealth of important and informative material concerning rape. For example, 47 percent of rape trials in England result in acquittals. In New Zealand in 1965, 25 percent of rape and attempted rape cases resulted in acquittal.

⁷Op. cit. p. 238. But see *infra* p. 189 of the present chapter.

⁸A report of the Cambridge Department of Criminal Services, St Martin's Press, 1957.

In 75 percent of English cases in which specific recommendations were made by the medical profession, they were adopted by the Courts; the Police estimated that alcohol played a significant role in only 6 percent of sexual offences. From a review of New Zealand cases it seems impossible to say in how many cases alcohol played a "significant" role, but alcohol was present in a majority of cases.

Cases of murder associated with rape are discussed in the study of murder. In at least one of these cases (Case V) rape allegedly took place after death. Although some have described this case as one of necrophilia, the evidence is inconclusive.

One of the rare cases of necrophilia took place in New Zealand in 1948. A man, aged 24 years, took the body of a girl aged 12 years from a local morgue and committed an indecent act upon it; if a live person had been involved, the act could have been described as complete sexual intercourse, or rape. Mr Justice Fleming said: "I do not think our criminal code foresaw the possibility of this type of offence, and, although there is a section in the Act which deals with it, I do not think the composers of the Act thought of an offence like this, because the maximum penalty is only two years." The prisoner had had previous convictions for dishonesty. He was released in 1951 (his total sentence being four and a half years because of cumulative sentences for dishonesty). As far as is known, he has not since offended.

Besides the repeated rapes and necrophilic offences, three other rapes should be mentioned—two because of the ages of the victims and the third for the background to the offence.

In 1950 a 17-year-old youth of dull, normal intelligence from a "normal" environment entered a neighbour's house and picked up from her cot a 19-months-old girl who was crying. When she stopped crying, he removed her napkins, forced his penis into her vagina and raped her. He was sentenced to five years hard labour and five years reformatory detention.

The psychiatrist's report said that the convicted youth discussed the offence frankly but with a rather striking absence of normal emotional response. . . . Until the offence he had "never been around" like other youths and had no sex interests or experience. He had few companions, no girlfriends, few general interests, and no sporting activities.

The talk of older men had aroused his interest in sex. His own puberty had been reached at the age of 16 and according to his father he suffered from insomnia, emotional instability, and unreasonable worry over trivial things. The development of secondary sex characteristics appeared to be retarded. He was released in 1956 and has not offended again.

An 81-year-old widow was raped in 1962 by a young man of 25 years. In his statement to the police, he described how, after the rape, he went home, ate three eggs and went to bed. Mental limitation and illiteracy prevented his indulging in hobbies or outside activities except drinking. He ascribed his offence to alcohol.

The third rape was that of a 16-year-old schoolgirl by a youth of 17. The assailant had himself been the subject of sexual assaults by his father since the age of eight years. He was mentally retarded and scholastically backward. Apart from his father's assaults, two older men served prison terms for their indecent acts upon him.

The youth described how some nine months before the rape he had felt a growing urge to have intercourse with a girl. "I wanted to have sexual intercourse with a girl, but, as I did not know any girls, I have never been able to get the experience." So he planned to attack some young girl and have sexual intercourse by force.

This youth was sentenced to 14 years imprisonment, but the Court of Appeal quashed the sentence and reduced it to five years. His case presented many problems to penal administration in protecting both other prisoners and the culprit himself from further contamination. Today he is back in society, married, and leading a normal life.

INCIDENCE OF RAPE, ATTEMPTED RAPE, ASSAULT WITH INTENT TO COMMIT RAPE, AND AIDING AND ABETTING RAPE IN NEW ZEALAND

The first table is the rate per 100,000 male population over the age of 10 years of the two main racial groupings:

	Maori Rate	(Actual figures)	Rate	Non-Maori (Actual figures)
1957	14.49	7	0.49	4
1958	8.14	4	1.68	14
1959	3.93	2	0.82	7
1960	17.15	9	1.04	9
1961	60.61	33	2.16	19
1962	31.64	18	1.00	9
1963	20.31	12	1.85	17
1964	3.27	2	0.96	9
1965	14.07	9	1.25	12*

*Includes two Samoans, one Cook Islander, and one Tokelau Islander.

AGE OF OFFENDER AND VICTIM

The average age of 195 offenders (1957-65) was 25 years and ranged from 15 to 42 years.

The average age of victims—in some cases the age is not given—was 20 years. But ages showed a wide range from 19 months to 81 years.

SENTENCES

Sentences ranged from preventive detention to probation. The average prison sentence was four to five years.

GANG RAPES

Gang rapes have occurred sporadically during the past 15 years. This type of rape is defined for working purposes as one in which the

victim is raped by three or more males. The incidence of such crimes is shown in the following table:

	Number of Gang Rapes	Number of Males Involved
1951	1	5
1952	2	3, 6
1953	1	3
1954	1	4
1955	..	..
1956	3	3, 3, 1 (+8 who appeared in the Children's Court)
1957	1	4
1958	2	3, 3
1959	1	3
1960	1	3
1961	7	3, 3, 4, 5, 7, 8, 11
1962	1	5
1963	1	4
1964	..	..
1965	..	..

The high incidence of gang rapes in 1961, involving 41 offenders, was an isolated phenomenon which may have occurred by chance. It has been suggested that radio and press publicity given to the rapes may have been a factor in suggesting this behaviour to groups of youngsters who would not have thought of it otherwise. The rapes occurred in widely separated parts of the country, and it is difficult to give any satisfactory explanation for their occurrence within such a relatively brief period.⁹

THE VICTIM

The physical and mental injuries suffered by all victims of rape are a matter of concern to the community. In many instances the injuries are not sufficiently serious to incapacitate, but in gang rapes both the physical and the mental suffering are undoubtedly great. So far it has not been possible to examine the effects of rape, although such a study might well be possible in cases involving young children.

In New Zealand the Criminal Injuries Compensation Act makes provision for some material compensation for victims of rape.

⁹A comparative study of rape in the period 1920-1930 and 1950-1960 was made in 1961. This study, with additional comments, is presented as an addendum to the chapter. In addition to its historical interest, it indicates changes in rates of offending, and a changed pattern of offending within each ethnic group.

CULTURAL FACTORS

Cultural factors are significant in any assessment of sexual assaults. Authorities on Polynesian culture believe that Islanders and Maoris have had a very different attitude to rape from that of Europeans. This may account for the disproportionate rate of Maori offending. But more intensive study may well reveal other factors.

CHILD RAPES

Between 1950 and 1966, 10 men were convicted of raping girls aged 10 years or less. The age range of the victims was from 18 months to 10 years. Sentences varied from six to 10 years imprisonment. The conviction of four such rapists in one year (1966) caused public feeling to be roused, and thousands of letters were received by the Minister of Justice demanding heavier penalties for "shocking" offences.

The convicted men comprised four New Zealand Europeans, four Maoris, one Cook Islander, and one Tokelau Islander, and their ages ranged from 17 to 30 years. Alcohol was an important factor in at least three cases. The other offenders showed symptoms of abnormality.

One of the rapists who was convicted of raping a 10-year-old mentally retarded child and sentenced to preventive detention, had a record of 16 previous convictions, three of them involving sex and the remainder associated with alcohol. Members of his family had been convicted of assault, breaking, entering, and theft, and indecent assault. He was also described as certifiable.

Maladjustment in one form or another was present in all the offenders, although in one case the lack of adjustment was social rather than personal. In this instance the offender had no history of aberrant sexual tendencies nor evidence of neurosis or psychosis. His was an unsophisticated, primitive reaction to unaccustomed alcohol.

PEDOPHILIA

Sexual acts between adults and children are, perhaps, the least accepted form of sexual behaviour known in our society. The immediate public reaction to reports of sexual assaults on children is recognised as the expression of a deep and well-meaning concern for the welfare of the child concerned. In view of this wide public involvement, there is a vital need for studies which will lead to a greater understanding of the people committing crimes against children, and of the offences themselves.

Pedophilia is the name given to sexual activity involving a sexually immature subject—the expressed desire for sexual gratification with a pre-pubertal child. The age boundary usually adopted is 12 years. Pedophilia can be either heterosexual or homosexual. In a few cases one person offends against children of both sexes. In a study of 130 pedophiles undertaken in 1961,¹⁰ it was found that only 15 had been convicted of

¹⁰Patchett, R., *Paedophilia*, M.A. Thesis. Department of Justice.

offences against both male and female children. A subsequent study of 60 pedophiles in New Zealand revealed that 13 had been convicted of offences against both sexes.

The law against pedophilia is contained in sections 132, 133, and 140 of the Crimes Act 1961 which state:

"s. 132 (1) Every one who has sexual intercourse with a girl under the age of twelve years is liable to imprisonment for a term not exceeding fourteen years.

(2) Every one who attempts to have sexual intercourse with any girl under the age of twelve years is liable to imprisonment for a term not exceeding ten years.

(3) It is no defence to a charge under this section that the girl consented, or that the person charged believed that she was of or over the age of twelve years.

(4) The girl shall not be charged as a party to an offence committed upon or with her against this section."

"s. 133 (1) Every one is liable to imprisonment for a term not exceeding ten years who—

(a) Indecently assaults any girl under the age of twelve years; or

(b) Being a male, does any indecent act with or upon any girl under the age of twelve years; or

(c) Being a male, induces or permits any girl under the age of twelve years to do any indecent act with or upon him."

Subsections (2) and (3) are the same as subsections (3) and (4) of section 132.

"s. 140 (1) Every one is liable to imprisonment for a term not exceeding ten years who, being a male—

(a) Indecently assaults a boy under the age of sixteen years; or

(b) Does any act with or upon any boy under the age of sixteen years; or

(c) Induces or permits any boy under the age of sixteen years to do any indecent act with or upon him.

(2) No person under the age of twenty-one years shall be charged with committing or being a party to an offence against this section.

(3) It is no defence to a charge under this section that the boy consented."

It is impossible to be absolutely sure of the etiology of pedophilia, and the identification of etiological factors depends substantially upon the particular theory to which one subscribes. Superficially, it could be said that the pedophile has a marked sense of his own inadequacy, and this inadequacy makes him afraid to approach adults; he may, perhaps, even be incapable of establishing any relationship with an adult. Children, however, are more trusting, less sophisticated, and more tolerant of inadequacies than are adults. Or an adult may be attracted to children

because he is too feeble-minded to function at an adult level. Again, he may demand sexual satisfaction from a young boy as an escape from an unendurable sexual conflict within the personality.

According to Freudian theory, pedophilia is due to either external or internal inhibitions. For example, it may be found that an offender was brought up in an environment in which sex, and any discussion of it, was considered taboo—the external inhibition thus developed is sufficient to make him avoid any actions of adult sexuality. The Freudian theorists would also say that pedophilia is the result of an unresolved Oedipus complex. A mature female implies “Mother” and the pedophile is still conditioned to thinking that his mother is sexually unapproachable; hence a child is substituted. If the child chosen is of the same sex, the Freudian interprets this as being based on narcissism; the pedophile sees either himself or an image of what he would like to be—the perfect child.

Other theories of the etiology of pedophilia have stressed senility, impotence, and mental and emotional retardation. Clifford Allen (1962)¹¹ attributes pedophilia to a fixation at an early level of psychosexual development. Havelock Ellis¹² stated: “Apart from senility there seems to be no congenital sexual perversion directed towards children. There may, exceptionally, be a repressed subconscious impulse towards unripe girls, but the chief contingent before old age is furnished by the weak-minded.”

Patchett in his study of New Zealand pedophiles based his theory of the etiology of pedophilia on “negative experience”. He stated: “. . . in cases of pedophilia there has been a life history of negative emotional experience with people. At one time in the childhood of the pedophile there has been a sexual experience with another child which, instead of merely assuaging the curiosity motive (as these experiences seem to do with most normal children), has aroused in the subject the feeling that his partner was another human being making positive friendly advances for perhaps the first time in his social life.

“Consequently, in the future, when the pedophile is rebuffed in his social advances, when his need for emotional attachment becomes great, he attempts to recreate that first situation of emotional and social satisfaction. It would then follow that some pedophiles demonstrate in the child objects that they pursue, that they are attempting to find either a particular child or children with some characteristic common with the child with whom they first experienced this relationship.”

It can be seen that many of these etiological factors overlap, and it may be difficult to assess the relative importance of each. In a majority of cases, however—apart from the manifestations of senility and impotence—it is during childhood that events, situations, and environments can act to such an extent as to produce in later life a pedophile.

¹¹Allen, Clifford. *A Textbook of Psychosexual Disorders*. O.U.P. 1962.

¹²Ellis, H., *Psychology of Sex*. Heinemann 1963.

It is often difficult to ascertain the exact nature of the acts which constitute pedophiliac offences. They can often be inferred only from the nature of the criminal charges—that is, whether the charge laid is one of “sexual intercourse with a girl under the age of 12 years” (s. 132 Crimes Act 1961), or “indecenty with a girl under 12 years” (s. 133 Crimes Act 1961). In cases of homosexual pedophilia it is almost impossible to gauge the nature of the offences from the charges laid, as the governing section of the Crimes Act 1961, s. 140, makes no special distinction for pedophilia.

Mohr, Turner, and Jerry¹³ contend that pedophiliac offences consist, in the main, of non-coital sex play. The acts are similar to those engaged in by pre-pubertal and pubescent boys and girls—fondling, showing, and looking—which are common enough actions among boys and girls of the victim's age. Of 30 pedophiles imprisoned at one time in New Zealand institutions, only seven had been convicted of an offence involving intercourse.

An interesting distinction may be drawn between heterosexual and homosexual offences according to the degree of planning undertaken by the offender. According to Bernard G. Glueck in his final report on the Research Project on Sexual Crimes, based on a study of convicted sexual offenders in Sing Sing Prison, heterosexual offences tend to be impulsive, or at the most, partly planned. He found that 42 percent were impulsive, 38 percent partly planned, and 20 percent fully planned. Homosexual offences, on the other hand, tend to be less impulsive and more deliberate. The proportions here were almost the same as those for heterosexual offences—48 percent fully planned, 30 percent partly planned, and 22 percent impulsive.

According to the age at which a man is convicted of an offence against a child, the pedophiles can be classified into three groups—the young (who reach a peak at around 20–25), the middle-aged (in the mid 30's to early 40's), and the senescent (from the late 50's on). The distinction between the groups is not, of course, absolute, as there are some recidivists who offend all their lives—except during the periods when they are incarcerated. The characteristics of the main groupings, however, are sufficiently distinctive to warrant special consideration of each group.

It has been said that pedophilia and other sexual offences are “first offender” offences—that is, the reconviction rate is very low (for pedophilia it has been estimated to be 13–17 percent). This fact makes a detailed study of each age group possible, as the youngest age group is not composed mainly of future recidivists; nor is the oldest age group made up of graduates from the previous two groups. The youngest age group, however, is by far the largest.¹⁴

¹³Mohr, J. W., Turner, R. E., and Jerry, M. B., *Pedophilia and Exhibitionism*, University of Toronto Press, 1964.

¹⁴These statements relate to a crime in which there is probably a large area of unreported or unsolved offending.

Mohr, Turner, and Jerry (*supra*) presented certain characteristics for each age group. The adolescent shows retarded maturation. The offender's social relationships, functioning, and judgment are usually impaired. He shows a strong need to be dependent, and other people are seen either as overgratifying or as not gratifying this need.

A.B.'s offences are typical of many pedophilic offences. As stated in the police charge sheet, "the defendant met a boy (aged 12 years) at a bus stop. The defendant and the boy both boarded the bus to the city and sat together . . . the defendant took the boy to a men's convenience at a city cinema. He undid the boy's trouser buttons and handled his private parts. Later he took the boy to his home and, by arrangement, waited for the boy to come out after he had had his tea. At about 6.30 p.m. that same evening the defendant took the boy to the men's convenience at the railway station, where he committed a similar act."

A.B., who was seventeen years old, was sentenced to borstal training. The main difficulty encountered during his sentence was in persuading him that he was in need of special treatment if he were not to spend the greater part of his life in penal institutions as the result of uncontrollable impulses. He considered that because he had been sentenced to borstal training, he should not be required to undergo any other form of treatment.

V.S. (aged 23 years) was sentenced to 15 months imprisonment for inducing a boy aged 11 years to do an indecent act upon him. He had been driving his truck when he saw the complainant waiting at a bus stop. He stopped and offered the boy a ride. The boy consented, so V.S. delivered his truck load and then drove to a deserted area, passing the boy's home on the way. He then forced the boy to commit fellatio on him.

V.S.'s home background is average—he had a reasonable up-bringing and was well cared for by his parents. The general opinion of V.S. and of his offences is that it was the result of a sudden impulse. Such behaviour was quite contrary to his character.

T.W. (aged 22) was convicted of attempted indecent assault on a girl aged nine years and 11 months. He had been away from work with influenza, and was returning home from doing some shopping when he saw a young boy and girl on their bicycles. He stopped them and asked if they would like to see a kitten. They said they would and followed him to his parent's home. On the way, the two children were joined by a friend, the complainant. When the group arrived at his house, T.W. told them that only one could go in at a time. The complainant was the first to enter. Inside T.W. led the girl around the house, making a show of looking for the cat. While they were in his bedroom the defendant lifted the girl on to his bed, asked her if she would like to earn some money and produced a sixpence. The girl did not reply. T.W. then lifted the girl's skirt. Immediately she pushed the skirt down

and sat up; she said she and her friends would have to go, and left the house.

T.W. made no attempt to restrain her or to take the incident further. When interviewed by the police, he stated that he had felt "a peculiar sensation" when he saw the girls. He had intended interfering with them sexually, but the complainant's unwillingness made him realise that he was doing something seriously wrong, and that he must stop. It seems that T.W.'s offence was one of curiosity rather than an effort towards any degree of gratification. He was released on probation and received supportive counselling from his probation officer.

The middle-aged group of pedophiles (who are predominately 35-46 years old) are characterised by severe marital and social maladjustment. It is frequently found among the homosexual members of this group that they have sought friendship with boys by becoming leaders of youth clubs, scout groups, and similar organisations. There is often a quasi-parental attitude toward the children.

L.N., serving a two-year prison sentence for indecently assaulting two girls aged nine and 11 years respectively, was 36 years old at the time of the offence, married, with two children.

As a result of the sometimes brutal assaults which he committed when he was drunk, his wife had left him and taken the children with her. Of the agreed sum of maintenance he paid but little. He claimed that he was unable to see his children, which made him unhappy, and he drank very heavily. He says that the offences described above were committed when he was drunk.

The "senescent" pedophiles (those over the age of 55) are characterised by a sense of loneliness and isolation. Most of the pedophiles in this category show no sign of psychological disturbance, but they can find no other outlet for their emotions.

E.L. was 59 when he was sentenced to one year's imprisonment for indecently assaulting a girl under the age of 12 years. He was a widower, who became extremely lonely and depressed after his wife's death. Poor health increased the difficulty of adjusting to life without his wife.

It would appear from comments made about his offences at the time of his conviction and later, before his release, that he did not fully appreciate the wrongness of what he was doing; he felt that his handling of the little girl was simply a friendly gesture on his part. It would seem also that he has now learned his lesson and will not offend again. He has "insured" against reoffending by arranging to live with his married daughter.

At the age of 70 O.R. was released on two years probation for indecently assaulting a nine-year-old girl—his granddaughter. It would seem that the offence was a result of senility. When he was younger, he had served as a soldier and was later employed in truck driving, taxi driving, and work on the waterfront. A probation report prepared before sentence commented: "Today he seems lively enough, but he is a man

whose memory is failing and a man who, understandably, looks back on his former years of active life. Ever fresh in his mind are the years of service in the two World Wars and the warmth that went with that comradeship. He tries to hide the fact that he feels that his usefulness is at an end and, because of his erratic behaviour and in spite of being surrounded by his family, he is often very lonely. Some of his behaviour might be termed childish, and there is an element of this in the circumstances of the present offence."

The recidivist pedophiles are distinguishable from other pedophiles only by reason of their continued offending. F.G. is an example of this type of offender. He was first convicted in 1926 of assault on a female and indecent exposure. For the former offence, he was released on three years probation. He was then 16 years old.

In 1933, after another conviction for indecent assault on a female (in this case a nine-year-old girl) it was stated that while he did not suffer from any epilepsy or psychosis, he was mentally subnormal, although not to the extent of feeble-mindedness.

F.G. has spent much of his life in prison. There was, however, a long period—from 1937 to 1952—during which he married, established himself as a reasonably successful house painter (a trade learned during one of his earlier prison sentences), and served in the Second World War. However, in 1952, 1958, and 1964 he was again convicted of sexual offences—the first of obscene exposure to young children, later of indecent assaults on young children.

F.G. is shy and introverted. He has not sought friends, but has been content to remain at home. His offending seems to be the result of uncontrollable impulses to which he has been subject throughout his life. He admits that while in prison he has been advised to seek medical treatment when released, but he has failed to do so, as he has found it difficult to confide in anyone. Illustrative of all his offences and of his general demeanour is a comment made by a probation officer in a pre-release report: "He will be an easy man to supervise and, probably when it is least expected, the police will telephone the probation service and state that F.G. has been arrested for some sexual malpractice."

Can a composite picture be drawn of the pedophile? Although it is maintained by many people—for example Mohr, Turner, and Jerry¹⁵—that in intelligence, intellectual attainment, occupations, social interests, religion, etc., the pedophiles show an essentially normal distribution, the dominating characteristic among such offenders in New Zealand prisons is weakness—weakness of intelligence, of physique—more closely aligning to the stereotype of senile dementia or mental retardation. This external appearance may, however, be the result of a severe experience of insult, indignity, and abhorrence, which starts at apprehension and continues through trial and, particularly, throughout the prison sentence.

¹⁵Mohr, Turner, Jerry, *Pedophilia and Exhibitionism*. Op. cit. p. 7.

It may reach a climax in the treatment meted out by fellow prisoners who rank them in the lowest of prison "castes", despised, rejected, and humiliated. Then, again, the pedophile may have been the subject of blackmail from a child who, worldly-wise enough to realise his helplessness, may even incite him into offending in order to reap some monetary gain.

Two cases are quoted by Michael Schofield in an article in *New Society*:¹⁶ "I was scared to death of the boy. If only I'd had the guts to tell someone. I paid pounds to get rid of him . . . One time when I paid him £2, I said, 'This is the last time.' But he said 'I'll keep coming, don't worry . . .' He just drove me nuts. God knows how much I paid him."

Another said: "He knew he could get me into trouble. I'll never forget the last time I saw him. He came up to me and said could I lend him some money because he wanted to go to the motor-cycle scramble. 'I haven't got any money, I'm out of work,' I said. He turned around and said, 'You'd better get some, or else . . .' I just pleaded guilty. They'd only have said, a man of your age should have known better, so its no good making excuses, even if the boy was a little tramp and a blackmailer too."

This leads to an important question: to what extent can the "victims" of a pedophilic offence participate in that offence, and to the more general question of what are the effects of the offence on the victim?

The common assumption is that the child upon whom the act is perpetrated is solely a "victim", but this may be true only in a legal sense in which the offender is an offender merely because he is an adult, and the victim is a victim because he is a child. It has been shown in studies made¹⁷ of the "victims" that, if not the actual instigators of the offences, they may yet be willing participants. Gibbens and Prince¹⁸ report that approximately two-thirds of the victims are participants—they co-operate in an assault more than once, or with more than one assailant.

Several factors are considered to make children more likely to encourage a pedophilic assault. These are:

- (a) Emotional deprivation in their own homes. In such cases it is the gain in affection, attention and approval from the offender which is attractive. The children feel that their parents do not fully appreciate them, whereas the pedophile does. This feeling does, however, lead to a sense of guilt which in itself is an incentive to participation in the child's attempt to assuage his guilt by allowing himself to be punished and mistreated.

¹⁶Schofield, Michael, *Child Molesters*, New Society, 14 October 1965.

¹⁷E.g., Bender and Blair, 1937; Cohen 1951; Wiess 1955.

¹⁸*Child Victims of Sex Offences*, Gibbens, T. C. N., and Prince, Joyce. I.S.T.D. 1963.

- (b) The child may be generally maladjusted. In these cases it seems that the participation is but one of many symptoms of maladjustment. The child may be promiscuous, provocative, may steal, play truant, run away from home. He may also "seduce" his assailant in order to demand money from him.
- (c) The participation may be a sign of a more specific maladjustment—generally in the child's attitude to sex and sexual development. This may be more prevalent in female participating victims. The parents may adopt an ambivalent attitude to their child's sexual development, thus confusing her. They may be proud of her growing attractiveness and winning ways, and at the same time reprimand her severely for "flirting" or indulging in normal and harmless sexual play.

Despite the identification of these factors, it is still difficult to assess from evidence given in Court the degree of participation by the victim. Gibbens and Prince¹⁹ cite as typical the case where "a young girl after looking for extra attention because her home life is disturbed by tensions and parental quarrels, visits the local shopkeeper and is given occasional sweets. She is so friendly that one day he invites her into the back room and some indecent acts occur, perhaps peeping, or stroking, or cuddling. The girl knows that something 'wrong' has occurred, and, depending upon whether immediate fear of the man or guilt about her participation is uppermost, tells her mother at once or confesses to it later when she is questioned about coming home late from another meeting. The mother shows extreme anxiety which is rapidly converted into violent hostility to the assailant. This display of rage alarms the girl for she is bound to think: 'If mother is so angry with the man, what would she do to me if she found out the part I played in it?' The police are called, the assailant is taken away, several interrogations and a medical examination follow; the neighbours gossip about it, often because the mother tells everyone; the girl becomes an object of fascination to her friends and at school. . . . If the case comes before the Magistrate's Court there may be more interrogation and the child has the unpleasant experience of seeing the offender again and wondering whether she ought to continue the old habit of saying nothing because of bribes and the threats . . . but at least the procedure is brief and fairly informal. . . .

"If the case goes to the Supreme Court, however, an interval of two months or so may follow . . . there is probably a good deal of rehearsal by the mother of what the child will say in Court so that she will be a 'credit' to all concerned. How much of the result is a stereotype of previous statements which the child feels she must not depart from, and how much is real memory, is very doubtful. . . ."

The evidence given at a Court hearing is more likely to be interpreted in favour of the "victim" than of the offender, so concerned are we to

¹⁹Gibbens and Prince, *ibid.* p. 4.

safeguard young children. A case which, from evidence given in Court, may seem like a "straightforward" unprovoked sexual assault on a defenceless little girl or boy may not, in fact, be so.

The effects of a sexual assault and of the events that follow it on the victim must be considered although, as with victim participation, it is possible only to give an impression. In New Zealand, little official notice is taken of the victims. There is no automatic counselling of the family and child unless it is felt by the police at the time of the arrest that the nature of the offence, or the condition of the child, or the condition of the family, warrants intervention by child welfare officers. Impressions of the effects of sexual assaults on children can, therefore, be based only on the experience of people in other countries.

It is not only the actual physical harm that may result from an assault which must be considered. The effect of other persons' attitudes to the offence, the Court appearance, and the stress of waiting for the Court hearings are also important. As Gibbens and Prince say, "appearance in Court . . . is not the main cause of harmful results. In general, people are far too ready to believe that 'shocks' and short-lived traumatic events have permanent consequences. In real life what usually does harm is a stress which lasts for weeks, months, or years and requires the child to make readjustments in a whole pattern of attitudes. Court appearance is harmful mainly because of the situation it creates. The essential feature is that the child has to reorientate its ideas towards an adult interpretation of the offence and its punishment, and accommodate itself to a new atmosphere in the home." The amount of harm arising from this stress and reorientation does, of course, depend primarily on the child's emotional status and its security in its environment.

The problem of the harmful effect of the actual Court case has been met in Israel by the introduction of trained youth examiners. In Israel, no child under 14 is to be investigated, examined, or heard as a witness in Court trials of offences. Instead the child is interviewed, not by the police, but by a "youth examiner" who is appointed by the Court. It is the examiner's responsibility to examine children whose evidence is required in respect of an alleged sexual offence and to try to obtain from them a full and correct version of what happened. The youth examiner's own statement, based on this examination and questioning of the child after his confidence has been won, is then fully admissible in evidence, but with the qualification that there must be other supporting evidence before the accused person can be convicted.

If such a provision were adopted in New Zealand it would involve a radical departure from existing procedure. But the practice followed in Israel has much to commend it. The harm done to a child forced to give evidence in Court of a sexual assault, among strangers and after, perhaps, a considerable length of time in which he has tried to forget the experience, is not the only objection to the present procedure. It also often happens that satisfactory and coherent evidence cannot be obtained from a young child in the unfamiliar atmosphere of the Court,

though the story he has previously given to people he knows and trusts has been quite definite and consistent.

Although the advantages of introducing such a scheme in New Zealand are apparent, there are disadvantages. The main objections have been: (1) That it removes the right of the accused to cross-examination of his accuser—a right which is essential to the proper administration of justice; (2) that it breaks the fundamental rule of the inadmissibility of hearsay evidence; (3) that the Court will have to make its judgment from the statement of the examiner, a statement which may have already been subject to consideration and—even if unintentionally—to judgment by the examiner. Other objections have been that children are likely to indulge in flights of fancy, imagination, and exaggeration—which is quite normal. Where this is likely to lead to a miscarriage of justice it is essential to keep them in touch with reality by an interrogation conducted by experienced Judges and advocates. Also, there may have to be corroborative evidence given by a child, perhaps of the same age as the victim. This, presumably, would have to be given in the form of a statement by the examiner—thus leading, perhaps, to a conviction on the statement of only one person. It is also felt desirable that the Court should judge for itself the credibility of a complainant child. Finally, it is pointed out that identification of the offender may only be established by the child saying whether or not his assailant is in Court.

Whether these objections and difficulties could be surmounted remains open for discussion. There are other possible ways of minimising the harm done to children which merit consideration. For example, little or no "after-care" is provided for victims and their families. Parents may need help with children who have been assaulted so that they will regain emotional stability and security. The children may also need support and counselling. Gibbens and Prince have emphasised the need for the appointment of special welfare officers—trained in social case-work, child welfare, and police work, whose primary task would be to work with the family.

HOMOSEXUALITY

Homosexuality appears to have been practised in all civilisations and among all people. On the other hand, the social attitudes adopted towards it have varied considerably. At times homosexuality has been approved and encouraged; at others it has been severely condemned and punished.

If Kinsey's²⁰ figures are applicable to New Zealand, about 4 percent of the adult male population are exclusively homosexual throughout their lives after adolescence. Kinsey also estimates that 37 percent of the total male population have at least some overt homosexual experience to the point of orgasm between adolescence and old age.

²⁰Kinsey, A. C., Pomeroy, W. B., Martin, C. E., *Sexual Behaviour in the Human Male*. Philadelphia, 1948.

Homosexual acts are defined by sections 140 (indecenty between man and boy), 141 (indecenty between males), and 142 (sodomy), of the Crimes Act 1961. The liability is absolute, and there is no defence of consent. The age of the participants makes little difference to criminal liability, with the exception that persons under 21 may not be charged with committing an offence or being a party to an offence under s. 140 and, unless the other male is under 21, no boy under 16 may be charged under s. 141.

If Kinsey's estimate is correct, detected homosexuality is but the peak of the iceberg. In 1964, for example, 84 people were convicted in New Zealand of indecent assaults on males. Probably a high proportion of these convictions were for pedophilic assaults—that is, assaults on boys less than 12 years old. In a 1965 study of 60 men imprisoned for indecent assaults on males it was found that only three had been convicted of offences against males over 21. Adult homosexuals appeared more frequently among those released on probation in 1965. In a sample of 17 probationers, six had been convicted of homosexual offences with adults.

Many theories have been advanced to explain why men become homosexual. Their variety is understandable when one considers the many factors which may be thought to have interacted to bring about homosexuality. These theories have three broad bases—homosexuality is either:

- (1) A genetic aberration; or
- (2) An endocrine imbalance; or
- (3) A psychological abnormality.

Some theories involve a combination of these factors.

Kallman's²¹ study is most commonly quoted in support of the genetic basis of homosexuality. His study was of 85 homosexuals who were twins—45 fraternal and 40 identical. He found that 50 percent of the fraternal and 100 percent of the identical twins were also homosexual. However, Kallman's results have not so far been substantiated elsewhere.

The suggestion that homosexuality is an endocrine disorder is quite popular. The argument may run: "Here is a man behaving in a feminine way. There are male and female hormones. Is it not possible that there is a female hormone present in the man which causes him to act in this way." On this basis, the introduction of male hormones should be sufficient to restore a balance, but this has been shown to be ineffective. Further, it has been found that castration does not make a man homosexual, nor does it in all cases prevent heterosexual activity.

Thus it would seem that theories of an organic basis of homosexuality—physical or chemical—cannot be fully supported. Yet they are still persistently postulated. Perhaps it is because homosexual tendencies in some men seem to be so fixed that they could only be innate.

²¹Kallman, F. J. (1952), *Journal of Nerv. Ment. Disorders*.

Theories suggesting a psychological basis of homosexuality vary widely.

The psychoanalytic theory²² assumes that homosexuals are men who have experienced some very deep disappointment which turned them against the female sex. Fenichel states:²² "The rejection of women by the homosexual is a distinctly genital one . . . psychoanalysis of homosexuals has heretofore always brought out the fact that homosexual men suffer from repressed memories, from castration anxiety arising from the perception of female genitalia . . . There are many reactions to such a castration shock provoked by the sight of female genitalia. This shock is in no way restricted to homosexuals; it may be found quite frequently in many heterosexual men. Only the reaction to this shock can be characteristic to homosexuals. Following the loss of an object, or following disappointment in an object, all persons tend to regress from the level of object love to the preliminary phase of this love, i.e., to the phase of identification; in other words they become psychologically the object which they cannot possibly possess. The homosexual individual, also, identifies himself with the woman following his disappointment in the latter, but what determines whether he will become homosexual is how and in what respect this identification takes place and in what particulars this identification is manifest. In a homosexual individual this identification takes place in regard to object choice, following his disappointment in his mother; like her, he loves only men."

Some have thought that the psychoanalytic theory is too narrow. Clifford Allen²³ states that homosexuality can be produced by the persistence of excessive emotion, either negative or positive, which has been aroused by the parents in the past. Allen suggests that homosexuality can be caused in one of four ways: hostility to the mother; excessive affection for the mother; hostility to the father; or excessive affection for an insufficiently male father. He describes the action of these factors. A boy can develop hostility to women if he is brought up in an institution and has little or no contact with women until puberty. He may even find a substitute for a mother in some male. Excessive love for a mother develops, often together with feeble hostility to a father. With a lack of a father, through death or divorce, there is no masculine figure for the boy to identify himself with. He becomes excessively attached to females and identifies himself with them, feels feminine and can love only men. A boy may be hostile to a father if the father is unsuitable in some way—if he is alcoholic, or if he illtreats the mother, or if he is overdominant. In such cases the boy might turn away from his father, identify himself more with his mother and thus, in later life, seek men as his sexual partners. Allen's fourth factor is excessive affection for an insufficiently male father. This may arise if the mother either dies, or leaves her husband, and he is left to bring up the children. As well as

²¹E.g., as put forward by Freud and Fenichel.

²²Fenichel, O. *Outline of Clinical Psychoanalysis*, London 1934.

²³Allen, C., *A Textbook of Psychosexual Disorders*, O.U.R. 1962.

absorbing his father's lack of masculinity, the boy may also become hostile to his mother, and hence to all women.

Another theory—and this is what seems to be most frequently cited by homosexuals themselves in explanation of their behaviour—is that homosexuality results from seduction by another male. All children are homosexual at some stage of their sexual development before puberty. It is argued that if at this stage the child is seduced by another person of the same sex, the transient homosexual state will be accentuated by the pleasure resulting from the behaviour, and its repetition is more likely to occur.

Just as the basic causes of homosexuality may differ, so may the factors which precipitate such behaviour. Sometimes, of course, a homosexual will say that he has known of his inclination all his life—he has never had any heterosexual interest. Often homosexuality will make its first appearance during intoxication, when alcohol has removed inhibitions and the awareness of prohibitions. Loneliness and depression may cause the manifestation of otherwise latent homosexuality. In some people homosexuality may remain concealed throughout life—practised only in dream or fantasy while the man leads an otherwise normal heterosexual life. Situations where men are deprived of the company of women may precipitate homosexuality. For example, prison inmates sometimes develop homosexual attachments to one another—even if they are heterosexual outside.

A question frequently asked is: What are homosexuals like, what sort of person is a homosexual? These questions presuppose, as do many commentators on the subject, that all homosexual men are identical. Many people believe the homosexual to be a rare phenomenon—a clinical curiosity, and something which one might never meet among the group with whom one would associate.

But homosexuality is not peculiar to members of particular professions or social classes; nor is it peculiar to the "intelligentsia". It exists among all callings and at every level of society, and among homosexuals will be found people from all levels of intelligence. The variations in physique and appearance are also endless—from the almost grotesque with falsetto voice, dyed long hair, and feminine clothing, to the robust and athletic.

In their choice of partners, homosexual men vary as much as heterosexual. Some prefer younger men; some, men of the same age. One deliberately sought out men who were his inferiors in social, economic, and intellectual standing.

The problem of homosexuality, and of sanctions against it, has recently attracted public attention and has gained heightened significance through the publication in Britain of the report of the Wolfenden Committee. This committee was appointed in August 1954 to consider: "(a) The law and practice relating to homosexual offences and the treatment of persons convicted of such offences by the courts; and (b) the law and practice relating to offences against the criminal law in connection with prostitution and solicitation for immoral purposes."

The committee's principal recommendation on homosexuality, namely, "that homosexual behaviour between consenting adults in private be no longer a criminal offence," has, perhaps, led to most controversy.

The controversy has centred around the problem of defining the spheres of criminal law and private morals. It is accepted that there is a sphere of conduct in which the behaviour of individuals must be controlled by the sanctions of the law—in their own interests, and in the interests of society. It is also accepted that there is a sphere which it is proper to leave to the dictates of the individual and his conscience, as guided by the standards of the society in which he lives. It is the extent of these two spheres which is controversial. At the moment fornication, adultery, and lesbianism between adult consenting females are considered as within the purview of morality; homosexuality, incest, and bestiality as within the purview of crime. This has not always been the division, nor is it now universal.

The function of the criminal law is to "preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are specially vulnerable because they are young, weak in body or mind, inexperienced, or in a state of special physical, official, or economic dependence."²⁴ Homosexuality between consenting adults in private should, therefore, be criminal only if it is so contrary to the public good that the criminal law must intervene as its guardian. The problem is to decide whether homosexual behaviour between consenting adults in private is necessarily contrary to the public good. A majority of the Wolfenden Committee, and recently, a majority of the British House of Lords, have considered that it is not; and an equally strong body of opinion has considered that it is.

In favour of retaining the present legal sanctions against homosexuality it is contended that:

- (1) It menaces the health of society;
- (2) It has damaging effects on family life;
- (3) A man who cannot gain satisfaction from men may turn his attention to boys.

In support of the first of these contentions, citations are often made of the societies of Ancient Greece, Rome, and Egypt, in all of which homosexuality was practised to some extent. All in time disintegrated, the assumption being that homosexuality led to disintegration. But this is a *non sequitur*, and is in any case impossible to prove. Hypothetical explanation of historical events scarcely provides justification for present-day legislation.

It is also difficult to see how society will be menaced. Will it be that in the absence of a legal sanction more and more men will become homosexual, and thus endanger the continuation of the species? Even

²⁴Report of the Committee on Homosexual Offences and Prostitution, H.M.S.O. 1957.

Kinsey's estimate of the extent of homosexuality (usually regarded as rather high) would seem to be low enough to preclude any great danger to the human race.

The distortion of moral values—the widening of the basic concept of sexual morality from one allowing only sexual intercourse between male and female within marriage, to one which also allows homosexual relations, and perhaps other forms of sexual behaviour—which may follow the legislation of homosexuality may indeed be a menace to the well-being of society. This is a problem which cannot be solved *before* the introduction of new laws. It is largely a matter of opinion. The Wolfenden Committee was of the opinion that the menace to moral standards would not be such as to warrant further intrusion upon a person's privacy, by keeping within the ambit of the criminal law private sexual behaviour of the homosexual kind.

The second contention—of the damaging effects on family life—may be true. It is not difficult to cite cases in which a homosexual marries, perhaps in an effort to cure himself or in the interests of conformity. But the marriage does not prove to be a success, and great unhappiness and distress may result. Fear of conviction under the present law may be an inducement to such marriage. But equal distress can be caused by homosexual behaviour by the wife or adultery by either the wife or the husband. There appears to be no evidence that the danger presented by homosexuality is any greater than that from other acts. Further, the mere existence of homosexuality in one of the partners can be of harm to a marriage and the legalisation of homosexual behaviour could have very little added effect. Distress is of course avoided by a man's not marrying at all because he has formed an acceptable stable homosexual relationship.

With regard to the third contention, it has been authoritatively stated²⁵ that a man who has homosexual relations with an adult male seldom turns to boys as partners. It is relevant at this point to note a comment made by Professor Curran, of St. George's Hospital, London, at a judicial conference on sentencing: "It is still not as widely recognised as it should be that homosexuals can be divided rather sharply into those who are attracted by prepubertal boys, and those who are not. The overlap between the two groups is small, in the order of, perhaps, 3 percent of homosexuals seen by a psychiatrist. . . . The popular concept of a sort of rake's progress, according to which those who indulge in homosexual activities with young men or youths end up bugging little boys, has no foundation in fact."

While the evidence given by eminent doctors and scientists is not disputed, a greater overlap has been found in New Zealand. About 5 percent of inmates of New Zealand prisons have been convicted of offences against males both over and under 21. It may be, however, that the rate of conviction for homosexuality is representative not of

²⁵E.g., in *A Textbook of Psychosexual Disorders*; Allen, C.; O.U.P. 1962.

the actual extent, but of the degree of discretion used; offences against children are far more likely to be reported, and imprisonment more likely to be the result of conviction. This means that a prison sample of homosexual offenders could consist primarily of members of the small 3 percent group described by Professor Curran. Further, there is no suggestion of legalising homosexual offences against boys; rather has it been suggested that the penalties for such offences be increased.

An additional argument raised against relaxing the laws on homosexuality is that it would "open the floodgates" and result in a tremendous rise in its incidence. Perhaps this view exaggerates the effect of the law on human behaviour. The Wolfenden Committee considered that the law itself probably makes but little difference to the amount of homosexual behaviour which actually occurs. It is highly improbable that men who find homosexuality repugnant in the present state of the law would find it any less so because the law permitted it in certain circumstances. Whatever the state of the law, there will always be strong social sanctions against homosexuality.

It has been suggested that New Zealand should follow the English decision in no longer legislating against homosexual acts between consenting adults in private. (Sexual Offences Act 1967 (U.K.), s. 1). This proposal needs examination. It is accepted that the limitations at present valid for heterosexual acts regarding consent and privacy are equally valid for homosexual acts, and that any problems about their application may be resolved in the same manner. About the definition of "adult" for the purposes of homosexual law, however, there is more difficulty. Considerations based on the need to protect young and immature persons, the determination of an age at which a man's sexual development may be said to be fixed, and the age at which a man must be considered responsible for his own actions do not necessarily lead to the same conclusion.

Several ages have been suggested as suitable distinction between child and adult. These have ranged from 16 to 30. The ages most frequently suggested to the Wolfenden Committee were 18 and 21. A decision on any age would of course be arbitrary—there must always be the problem of a person who might be considered as committing an offence one day, but not on the next as his partner became of statutory age. Some would argue that no age be set but reliance placed on the decision of jury, magistrate, or Judge on the susceptibility, or responsibility of each particular "victim". Such a method, although, perhaps, fair to some, would undoubtedly be inconsistent and impractical.

If homosexuality were moved out of the province of the criminal law and into that of individual morals there might be less likelihood of one of the worst features of the present situation—blackmail. From fear of exposure to the police and to society, homosexual men are obvious targets for blackmail.

As an example, V.T. demanded a total of £5,672 and received £4,248 18s. 8d., from an elderly doctor with whom he had had homosexual

relations on one occasion. The doctor later committed suicide. Naturally enough, few cases of blackmailing of homosexuals come to official notice. The problem does exist, however. The suffering which results from blackmail is so intense that any measure should be taken which might in some way reduce the possibility of blackmail.

Sir Hugh Linstead, a member of the Wolfenden Committee and a member of the British House of Commons, gave a cogent summary of the arguments for changing the law. He said: "There are two courses open to the community, and the question we have to answer is—by which of those two courses is morality better served? The first course is to make no change. If we make no change, we are acquiescing in convicting a hundred men each year and letting half a million or more go scot free. We are acquiescing in the continuance of a capriciously enforced Act of Parliament. We are acquiescing in deep divergencies in judicial opinion. We are acquiescing in different treatment before the law for the homosexual as compared with other sexual offenders such as adulterers, fornicators, lesbians, and so forth. We are maintaining a law which, judged by the ordinary four standards of good law (prevention, reformation, retribution, and deterrence), fails. The alternative choice is to recognise that this is a moral and not a legal question and to let it be dealt with by social and moral sanctions of public opinion."

INCEST

The prohibition against incest is almost universal and, with some exceptions, has existed for all time. There are indications that incestuous relationships were permitted in ancient times in Persia, Egypt, and Greece, and in a more modern period in parts of Polynesia, but even then among the ruling classes only. In ancient Rome, the Romans were terrified that incest would cause famine; when incest had been committed, an expiatory sacrifice had to be offered by the pontiffs in the grove of Diana. It was believed appropriate that atonement for the offence should be made to the goddess of fertility.

Various theories have been advanced for the establishment of the incest taboo, but they are of sociological rather than criminological interest. The fact remains that whether families are arranged on a conjugal or a consanguine basis, all societies maintain strict prohibitions against sexual relationships between close members of the family.

Incest was not made a criminal offence in England until 1900. Previously it was a matrimonial offence, and, if ever reported, was within the jurisdiction of the Ecclesiastical Courts. The passing of the Criminal Code Amendment Act in 1900 brought incest within the cognisance of the English criminal law. After a number of unsuccessful attempts, originally fathered by Sir Robert Stout in 1896, similar legislation was enacted in New Zealand in the same year. However no reference was made in the parliamentary debates to the contemporary legislation in the United Kingdom. It is amusing that one honourable member voted against the bill because he denied the existence of incest in New Zealand. "I do

not think that such cases occur as incest between fathers and daughters, stepfathers and stepdaughters, brothers and sisters . . . Why Sir, it is a libel on the people of New Zealand to say such a thing occurs here"—111 New Zealand Parliamentary Debates 532.

The present law regarding incest is stated in s. 130 of the 1961 Crimes Act:

"130. (1) Incest is sexual intercourse between—

(a) Parent and child; or

(b) Brother and sister, whether of the whole blood, or of the half blood, and whether the relationship is traced through lawful wedlock or not; or

(c) Grandparent and grandchild—

where the person charged knows of the relationship between the parties.

(2) Every one of or over the age of sixteen years who commits incest is liable to imprisonment for a term not exceeding ten years.

(3) In this section the term "child" includes an illegitimate child; and "grandchild" has a corresponding meaning."

The prohibition against incest is so strong that its breach can only be seen as a sign of some severe maladjustment. Clifford Allen²⁶ lists five possible situations which can lead to the establishment of an incestuous relationship:

(1) Where incest is committed between mental defectives who do not comprehend the prohibitions.

(2) Where alcohol removes the awareness of the prohibition.

(3) As a result of some cerebral disease—for example, general paralysis, senile cerebral degeneration.

(4) Where a brother and sister have been separated early in life, reared apart, and meet later as strangers.

(5) Where close relations are forced to live in overcrowded surroundings as a result of poverty, deprivation, etc.

These factors can, of course, interact and one may easily precipitate another. For example, it has frequently been found that the offender, the victim, and other relations (for example, a wife and other children) are mentally dull or defective, that their home is hopelessly overcrowded and that excess of alcohol has precipitated the commission of the offence. In at least 21 of 34 incest offenders studied, it was considered that Allen's factors had interacted.

The most common relationship leading to a prison sentence is that of father and daughter. An example of this relationship is P.R., who was sentenced to seven years imprisonment on three charges of incest against two of his daughters. P.R. was the father of at least 20 children, 16 of whom were born within 21 years during his second marriage. One of the most impressive points about his case is the persistent loyalty of his wife and children.

²⁶Allen, C., *A Textbook of Psycho-sexual Disorders*, O.U.P. 1962.

Incest between father and child is not only heterosexual. S.A. was convicted of homosexual offences against his two sons. It was alleged that the relationship had lasted for about six years—with his wife's knowledge. Poor marital relationships are frequently to blame for incest. Between S.A. and his wife, for example, it seems that there was a permanent division rather than any mutual affection.

It has happened that over a long period of time a wife is unsympathetic to her husband's sexual demands. One night he gets drunk and returns home to find that his wife is not at home or is unyielding to his demands. But his daughter can be persuaded to indulge in sexual activity. She may initially submit in fear of her father; later she may gain sexual satisfaction too—and this is one of the major problems of incest. Incest can also occur when the father is jealous of his daughter's growing attractiveness to other men.

One other relationship which can lead to offending is that of brother and sister. For example, C.L. and D.Z. were born of the same parents but reared apart. They did not meet each other until they were about 17 years old. A superficial sexual relationship developed between them. D.Z. stated that she was aware of the bar to such a relationship with her blood brother but that she had not thought a great deal about it. She knew it was wrong, but made no claim to any real affection for her brother anyway.

E.S. and T.S. did not meet until they were about 18 years old. They were not told of their relationship for some months, by which time a strong sexual relationship had developed between them. When told that their relationship was wrong, they continued to live together as man and wife. After repeated warnings, they were convicted of incest and released on probation. They later again lived together and were sentenced to imprisonment. They could see nothing wrong in their relationship.

A brother may be jealous of his sister's attractiveness to other men, and of any sexual relations between her and other men. V.I., for example, who was sentenced to three years imprisonment for incest, forced his 15-year-old sister to have intercourse with him when he learned that others had been having intercourse with her. He reasoned that if it were "good enough" for others, it was "good enough" for him. V.I.'s elder brother has also been convicted of incest with the same sister. The attitude of both brothers to the incest prohibition is typical of many of the people convicted of incest—they were fully aware of the wrongness of their acts, though unable to comprehend the social attitude towards them.

The incest offenders in prison appear to be of low intelligence, weak, colourless, and often illiterate. Frequently it appears that the incest was incidental to a generally unsatisfactory family set-up. The fathers often claim that their daughters were deliberately sexually exciting—and this would seem to be borne out by studies made of the "victims" of incest. As an example, when L.P. was convicted, his daughter—subsequently

sentenced to borstal training—stated that she decided one night to stimulate her father because he was feeling lonely. Her mother was in hospital at the time. Sexual relations were frequent after that.

It is perhaps, in the "victims" that the most serious effects of incest are seen. It often happens that the father, perhaps because he has lost control due to alcohol, assaults his daughter. He may later feel guilt or shame, but he can usually find some way of explaining away his actions. For example, T.A. thought he and his daughter's cousin should look after her sexual needs, not other men; some have felt it necessary to give their daughters "experience".

The girl, on the other hand, may be shocked and hurt—as she would probably be by a sexual assault by any other person. Through threats she may be forced to keep silent, and say nothing even to her mother. The behaviour may thus continue, and the girl become more and more acquiescent, until a very intense relationship has developed—with the natural bond between father and daughter intensified by the sexual association. If the relationship becomes known to others, she then has to play the part of the victim of a relationship which she has not only endured but enjoyed. A well organised relationship is discovered only on complaint by the girl. Perhaps many convictions for incest arise out of jealousy felt by an older girl when her place in her father's affections is taken by a younger sister.

All cases of incest involving children are referred by the police to the Child Welfare Division for investigation. If it is thought necessary, a child may be put under child welfare supervision or committed to the care of the Superintendent of Child Welfare. It is then possible to follow the progress of a girl to determine the effect upon her of the incest. Six girls studied all showed resentment of parental authority and all were promiscuous. This promiscuous behaviour seems to have been a reaction to the stress of the incestuous relationship, and the even greater stress resulting from its discovery.

Occasionally children are born of an incestuous relationship. One of the most frequent objections raised to incest is that children born are bound to be mentally defective or even insane, and likely to be physically deformed. This is contested by many—for example, Clifford Allen. He claims²⁷ that such a union accentuates all the qualities, good or bad, in the parents.

On discovery of incest, one of the first steps usually taken is the separation of the participants. This is usually done by imprisonment, probation, or supervision. If the separation is not permanent, the reunion of father with daughters, or brother with sister, may be fatal to any advantage that has been gained.

That separation is the answer has been doubted. Cormier²⁸ suggested that the mutual feelings within the family are so complex and intense

²⁷A *Textbook of Psychosexual Disorders*, supra.

²⁸Cormier, Kennedy, and Sangowicz. *Psychodynamics of Father-Daughter Incest*, 7 Canad. Psychiat., 203 (1962).

that the separation of the father from the family and his punishment leave them unresolved, often increasing the feelings of guilt on the part of the victim—who, as observed before, has often contributed to the offence.

If, however, there is no separation it would seem that very close supervision would be necessary to prevent further offending—supervision which would probably be impossible to maintain. The folly of release from prison on probation without adequate safeguards is seen in the case of E.S. and T.S. who resumed their cohabitation as soon as they were able to do so.

If the sanctions against incest are considered worth enforcing, the separation of incest participants seems the only way to enforce them. However, the purpose, method, and value of enforcing such a sanction on people who cannot comprehend its basis (see comments on the V.I. brothers, *supra*.) pose wide problems.

BESTIALITY

Section 143 of the Crimes Act 1961 prescribes a sentence of not more than seven years for bestiality, which may be defined as sexual intercourse by a man, or woman, carried out in any way with a beast or bird. Section 144 prescribes a sentence of not more than three years imprisonment for indecency with an animal. A charge under this section would be appropriate where, although there was evidence of indecency with an animal, the evidence fell short of establishing bestiality.

Against bestiality there is a traditional taboo. Evidence of the taboo is found in the Old Testament, the Jewish Talmud, and in ancient Hittite laws. The taboo has not always been universal. Even in Hittite laws the proscription appears to have been against particular animals. Contact with a cow, hog, or dog was punishable by death, while contact with a horse or mule was not subject to any punishment. These distinctions appear to parallel the distinctions between meat which was declared clean, and meat which was declared unclean. Bestiality occurred frequently in Greek myths.

Today the taboo against bestiality is as strong as that against incest. Adherence, however, may not be as strict as would at first appear. The Police Department recorded only three prosecutions for bestiality in 1964, and the same number in 1963²⁹. But Kinsey³⁰ estimates that "about 6 percent of the total male population is involved in animal contacts during early adolescence". He also states that animal contacts are largely confined to the rural portions of the male population—"if only the unmarried rural population is considered, the incidence figures range from 11 percent at 11–15 years of age to 4 percent at 25 years of age".³¹

²⁹Report on the New Zealand Police for the year ended 31 March 1965 and 31 March 1964.

³⁰Kinsey, A. C., Pomeroy, W. B., and Martin, C. E., *Sexual Behaviour in the Human Male*. Saunders, 1948.

³¹Kinsey et al., *Sexual Behaviour in the Human Male*, *supra*.

With such a small number of prosecutions, it is rare to find bestiality offenders in prison. E.V. was sentenced to 11 months imprisonment on charges of indecency with animals. He was then 64 years old. It was his first conviction. He was single and had lived alone for most of his life, having little contact with people and living the life of a recluse. A shy man, he always felt rejected by his family. He lived as a nomad, wandering around the country doing unskilled labouring.

E.V. was seen by some children behaving unnaturally with a dog. He admitted to indecency with a sheep and a bobby calf as well. He was thought to be not fully aware of what he was doing and not aware that his actions were wrong. His offences were probably the result of loneliness and enforced idleness since retiring to live on a pension.

It was thought that to prevent further offending E.V. should not live alone. He believed a housekeeper or a wife would solve his problem.

H.F. was 17 years old when he was convicted of bestiality with a sheep. He came from a good home, with harmonious family relationships. H.F. said that he was shy and that his interests were solitary—dismantling and reassembling cycles and engines—rather than in the opposite sex. His offence was compulsive; he had never done anything like it before.

The animals involved in bestiality include practically all those found on farms or kept in households as pets. Calves and sheep are common. Kinsey³² states that practically every mammal kept on a farm enters into the record, and a few of the larger birds—chickens, ducks, and geese.

The factors producing bestiality are similar to those producing pedophilia. The most important seem to be a fear or distaste of seeking a female companion, mental deficiency, immaturity and, of course, proximity to animals.

The taboo against bestiality, and the legal attitude to it, seem to be based on a sense of outraged morals rather than on a consideration of the harm resulting from the actions. It is possible that injury to the animal can be a result of the offence, but this hardly seems to warrant the severity of the attitude. If, as Kinsey estimates, such a high percentage of pre-adolescent boys have some experience of animal contact, it is obvious that the majority must grow through the stage satisfactorily—and unobserved. The advantage of penalising the few who are observed and subjecting them in some cases to scorn, debasement, and the occasionally severe treatment of a penal institution is open to question.

PARAPHILIA

Sexual offences are usually divided into two categories. The first contains the major offences such as rape, incest, assaults on females, and homosexuality. The second consists of the minor sexual offences—the paraphilias (fetishism, exhibitionism, and voyeurism). Some psychiatrists maintain that these are symptomatic of psychological disturbances as

³²Kinsey, et al., *op. cit.*

deep-seated as in the major offences. Nevertheless, the distinction remains, and the paraphilias are regarded as minor both for the purposes of discussion and research, and from the legal and social points of view. In the main there is a tendency to dismiss them rather airily as developmental problems which will solve themselves with time. Unfortunately it is often shown to be a false assumption.

EXHIBITIONISM

"In man's present condition of civilisation, modesty is a characteristic and motive so firmly fixed by centuries of education that presumption of a psycho-pathological element necessarily arises when public decency is coarsely offended."³³ Social prohibitions relating to the exposure of the human body vary with time and society—as, for example, the change in standards of decency at beaches over the last 50 years. But it is traditionally accepted that man may not expose his genital organs in public. In New Zealand, section 47 (1) of the Police Offences Act 1927 expresses the prohibition: "Every person is liable to imprisonment for a term not exceeding one year who wilfully and obscenely exposes his person in any public place or within the view thereof."

Exhibitionism, or obscene exposure, is ordinarily defined as exposure by an individual of his genital organs or other parts of his body, with or without the performance of sexual acts, in public places, or in the view of the public, and without regard for public decency. The criminological definition is slightly different. In this sense exhibitionism can be defined as the expressed impulse to expose the male genital organs to an unsuspecting female as a final sexual gratification. Thus the criminal charge of obscene exposure may be laid against people who cannot strictly be called exhibitionists—for example, those who accidentally expose themselves while urinating, particularly if under the influence of alcohol, and those in whom a general personality deterioration has taken place because of an organic or functional mental disease.

Many theories seek to explain why men expose themselves. One frequently suggested by psychoanalytic writers speaks of a castration anxiety—the male is afraid that he may be deprived of his sexual organs, his whole sexual identity, and thus feels a need to expose them to females who will feel jealous at not having any. Alternatively, exposure may result from feelings of stress of some sort—as in the cases of S.R. and D.C. Both of these men exposed themselves during their wives' pregnancies. For S.R. it was his wife's first pregnancy. In D.C.'s case it was the second. However, during his wife's first pregnancy she had developed toxæmia. D.C. blamed himself and sexual intercourse during the pregnancy for the toxæmia, so he enforced celibacy when she became pregnant for the second time.

With some men, exposure results from feelings of inadequacy. Perhaps they may feel rejected in some way by parents and feel the need

³³Krafft-Ebing, R. Von, *Psychopathia Sexualis*, London, Rebman, 1906.

to assert themselves—to prove their masculinity or self-identity to themselves and other people. One felt that he had been rejected by his father in favour of his half-brother. He felt that his brother had had all the attention, while he had had none.

Victims of exhibitionist offences are usually women or children. Homosexual exhibitionism is thought to be rare. Several writers have stated that exposure is most frequently to strangers. An often discussed question is what reaction the exhibitionist is aiming to produce in his victim. She may be frightened and run away, she may be indignant and abuse him, or she may be amused, pleased, smile or laugh at him. It is clear that a reaction is sought, but it is not clear what reaction is expected.

Nor is it really clear what is the effect, if any, of the exposure on the person to whom it is made. It is accepted by legal and medical opinion that to adult women exposure is more a nuisance than a danger—that is, once it is realised that there is no danger of further sexual assault—and that the "shock" of the sight of the exposed organs has been exaggerated. Effects on children may be more serious. They may be frightened, and normal sexual development may later be impaired. Any possibly harmful consequences, however, can be alleviated by adequate sex education.

Like many other sexual offences, exhibitionism is a result of civilisation, which deems it fitting that people should cover their bodies. If we were living in a society where men and women were accustomed to not wearing clothes, the sexual gratification found by exhibitionists would not be noticed as a perversion. In our society, it is important that exhibitionism be kept in its place as a minor offence.

VOYEURISM

In common with the other paraphilia, voyeurism, or scotophilia, is a way of obtaining sexual gratification without embarking upon a normal heterosexual relationship. This activity involves looking at other people indulging in sexual activity, or partially clothed. The desire to see other people, or animals, engaging in sexual activity is so widespread that voyeurism cannot be regarded as a sexual deviation unless it has become a complete substitute for conventional methods of gratification. It would seem that strip-tease shows and spectacles in which sexual activities are either suggested or actually demonstrated will always be popular amongst men, whether or not they are leading satisfactory sexual lives. Many men will stop and stare if they have the opportunity of observing a woman undressing.

The deliberate seeking of such opportunities as a substitute for sexual activity is resorted to by those whose sexual outlets are restricted by their capacity, moral code, emotional immaturity, or other circumstances. Voyeurs frequently haunt parks in the hope of observing the activities of courting couples, or they wander through dark streets at night so that they may peer into lighted bedrooms. They are found on the beaches

and in public swimming baths, frequented also by exhibitionists. Such men naturally provoke complaints from women. But some women invite attention by dressing, or undressing, with needless publicity, and by wearing scanty clothing. Persons indulging in voyeurism are often known as "peeping toms".

Closely related to voyeurism are other forms of deviation such as various methods of obtaining sexual pleasure by speaking, writing, reading, or listening to obscene, pornographic, or sexually-charged material.

Voyeurism can, and does, lead to other offences. The voyeur is sometimes charged with peering into a dwelling house, loitering, being on enclosed premises with intent, and similar offences. Assault and aggression may also result if the spectator is discovered and is assailed, say, by an outraged lover. Voyeurs are often withdrawn and introverted individuals, but there are cases on record when they themselves have been guilty of unprovoked violence resulting in injury or even death.

Scotophilia, or voyeurism, appears to be derived from the infantile desire to look. The curiosity of young children, particularly regarding sexual matters, cannot fail to be observed by those who do not blind themselves. Clifford Allen³⁴ cannot give any other explanation, and knows no experiments which throw any objective light on the origin.

Psychoanalysts have a long and complicated theory to offer. From their point of view scotophilia is a wish to deny castration. Clifford Allen cannot accept the Freudian view "in toto", and it seems improbable that the whole of voyeurism has been caused by castration fears, as most psychoanalysts suggest. It seems equally likely that the wish to look at somebody is the manifestation of love. And it is said with some truth that a man "cannot keep his eyes off" his beloved. If this is literally true, the wish to look at a woman is a sign of sexual attraction rather than related to any elaborate theory of castration.

Another writer, however, has indicated that ocular fixation is a reflex and in itself demonstrates how primitive the instinct really is. There is no doubt that this is not the whole story, since scotophilia, or sexual pleasure, comes from looking at females naked, or semi-naked, or in the sexual act. This would suggest that it was the direct fulfilment of an infantile wish to do so which was repressed and is now seeking frank satisfaction.

In cases of those who watch mating couples, one is tempted to suggest that there is considerable identification. The voyeur in this case is one who is sexually deprived for some reason and obtains pleasure from watching others do what he would wish to do himself.

The type of voyeurism which is directed towards females in a state of nakedness or semi-nakedness is catered for socially to a large extent by the theatre and the films. Many vaudeville entertainments are merely a frame in which the charms of beautiful women can be exposed to the

³⁴Allen, C., *A Textbook of Psychosexual Disorders*, O.U.P. 1962.

voyeurs of the audience. The strip-tease, fan dances, bubble dances, and similar entertainments are dependent on the same abnormal psychological mechanism.

Kinsey and his co-workers have pointed out that scopophilia-exhibitionism forms an important part in pre-adolescent sex play, whether it be homosexual or heterosexual in nature. As case histories indicate, voyeurism is not confined to any particular age group. One case that came before the Courts was that of a 60-year-old, successful professional man who, in the evening, took his dog walking as an excuse to peer through windows at girls in the area in which he lived. The most interested spectators at any nude show would usually include the very young and the more elderly, were it not for the fact that the former group is prohibited by law, unable to afford exorbitant entrance charges, and understandably discouraged by their female companion counterparts.

FETISHISM

A fetishist is one who finds sexual stimulation and satisfaction in some object belonging to a female, rather than in the female herself. Such a description would lead one to the conclusion that fetishism involves a fair degree of homosexuality, or at least a fear and a dislike of women. It would seem to be a matter of substitution and "association" in the sense of belonging.

The most obvious and common fetishes are underclothing worn close to the female body, evening dresses, and other female garments. Other common fetishes are overcoats, shoes, fur, and hair. Here texture and touch as well as association and substitution appear to have some element of attraction.

There is some overlap between transvestism and fetishism but the fetishist does not always wear the article he acquires. He finds temporary physical and emotional satisfaction in fondling and handling the sexual symbol.

Fetishism is a fairly common sexual aberration but not easily detected; convictions are usually for ordinary theft, burglary, and breaking and entering. In acquiring the desired object other articles are also frequently stolen, thus confusing and masking the real motive for the theft.

One such convicted thief always included spoons in his haul. This offender was an intelligent and perceptive homosexual who suffered from many other forms of perversion. He was so guilt ridden that he finally became certifiable and is now an inmate of a mental institution.

The fetishist is frustrated, withdrawn, and usually hypersensitive to criticism. He does not readily discuss his offence and will go to any length, not uncommonly including arson, to cover up his actions. The following is an interesting case:

O.T. was born in Ireland, educated to about fourth-form standard in England and brought to New Zealand to live when he was 14 years of age. His early background was fairly undisturbed, although his parents were not particularly affluent. He married but was divorced a few years

ago, his wife claiming that he deserted her. He now has neither dependants nor, in fact, any of his own people interested in him at all. At the age of 26 he was convicted on a number of small charges of theft and dishonesty; since then, for the last 28 years, he has not very often been at liberty, receiving prison sentences and finally preventive detention for a series of thefts, house-breakings and burglaries. O.T.'s fetish is women's shoes, (at one time he was reported to have had over 200 pairs in his possession). They are his sole source of sexual satisfaction.

His attachment to shoes began in his sixth year when they formed a love substitute for a much worshipped girl companion from whom he was torn in a parental tug of war. Being estranged from his mother and separated by war from his father, the sole representation of affection became a pair of shoes which his girl companion had left behind. They formed the centre of his world for many months. Lasting through many battles for possession with his mother, he took the shoes to bed with him as many a child takes to bed a well-worn toy.

TRANVESTISM

Transvestism has been defined as the wearing of apparel of the other sex, usually for sexual purposes though this is denied by many transvestites. History and literature bear many references to the practice of transvestism—from prohibition under the Mosaic Law, to the Roman emperor Caligula, to Viola in Shakespeare's *Twelfth Night*, and to Defoe's *Moll Flanders*. In many cases, the cross-dressing has been partly a form of disguise, as was more or less the case with the notorious 18th century French diplomat, the Chevalier d'Eon. Ellis in 1933 named the syndrome "eonism" after this man.

In some societies transvestism has been tolerated, or even encouraged, but generally it has been disapproved. In some present day societies, where it is not expressly forbidden, the practice is open to ridicule.

Transvestism is thought by most writers always to include actual impersonation. One can hardly be called a true transvestite unless the practice involves an effort to conceal the identity of the sex to which one belongs. Today, women appearing in men's slacks, jeans, overalls, trousers, or shirts, cause none of the excitement they would have created some 40 years ago; but a man appearing in public wearing a dress, yet leaving no doubt as to his true sex, frequently provokes ridicule. Some men, who have only a very slight leaning towards transvestism, may go to an occasional masquerade ball or party dressed as women.

Transvestism is not necessarily associated with effeminacy or hermaphroditism. Some transvestites are far from effeminate in appearance and attitude. Hermaphroditism is a special condition where the physiological and biological characteristics of both sexes are confused in the one person; vestigial genital organs of both sexes may be present.

Trans-sexualism is a further category. The trans-sexualist has often an intense and obsessive desire to change the entire sexual status, including the body structure. While the male transvestite enacts the role of a

woman, the trans-sexualist wants to be one and function as one, wishing to assume as many of her characteristics as possible, physical, mental, and sexual. The trans-sexualist is generally a transvestite, but the reverse is not at all generally true; most transvestites would be horrified at the idea of being operated upon.

Trans-sexualists usually have homosexual inclinations, whether they result in actual physical contacts or not. On the other hand, transvestites are often heterosexual, many marrying and raising families. Their transvestite practices could, perhaps, be called an auto-erotic outlet. Certainly, there have been many cases of narcissistic transvestites.

Transvestism itself is not a criminal offence in New Zealand, though in Taylor and McLachlan's study³⁵ eight of the 10 cases reviewed were in prison for such offences as vagrancy, theft, stowing away, indecency, and so on. As in the United States of America, transvestism is not an offence unless the cross-dressing is an attempt to deceive in order to defraud, or to be a disguise for the commission of some other offence.

Some theorists believe that the causes of transvestism are purely organic, albeit the bases have not as yet been discovered. Others postulate a purely psychological cause. Neither approach seems entirely satisfactory. An organic explanation would have to be looked for either in the hereditary mechanism or in the endocrine constitution, or in a combination of both. Organically, sex is always a mixture of both male and female components. But there may be dysfunction of the sex chromosome in rare cases.

On the other hand, the role of environment and psychological conditioning should be stressed. There are various situations in early childhood that can be held responsible for the development of a sexual deviation. From the "smothering mother" to the dominant female in the family and the cross-dressing of a little boy to please a parent, each case of transvestism can have a different beginning. The effeminate male may look and behave as he does on a purely psychological basis (imitating his mother for instance), but he may also be the product of a physical mechanism originating in his chromosomes. It is often impossible to distinguish between the two.

In some transvestites, there is no apparent deviation from the normal. These may be female impersonators—men who have learned that they can make much money through impersonating women at nightclubs, theatres, and so on.

One writer, W. S. Pugh (1956), postulates five major types of transvestites—

- (1) The *heterosexual*—loving the opposite sex, in the natural way.
- (2) The *bisexual*—with an attraction to both virile masculine women and to feminine men.
- (3) The *homosexual*—loving only his own sex.

³⁵Taylor, A. J. W. and McLachlan, D. C., *Clinical and Psychological Observations on Transvestism*, New Zealand Medical Journal, October 1962, pp. 496-506.

- (4) The *narcissistic* or *self-loving* (very common)—in which the feminine components of the subject's own personality give complete satisfaction to his masculine elements.
- (5) The *asexual* or *psychologically sexless* type—often impotent and finding full satisfaction in life in some feminine occupation, such as that of a domestic servant.

Certainly, all these categories are found readily enough, both in transvestites and in ordinary people.

Although some psychoanalysts have stated that if transvestites are not actual practising homosexuals, they are still "unconscious" homosexuals, it must be remembered that psychoanalysis, Freudian or otherwise, is still theory. Many psychologists would deny such theories in this field. To say that one is an unconscious homosexual is, in the opinion of some, the same as saying that one is an unconscious murderer or rapist. It has been further stated: "The unconscious mind is supposed to obtain its knowledge by intuition. No one knows what intuition is. A reputable psychologist does not use the word in conversation."

Yet again, the popular conception of transvestites as being identifiable by their appearance is quite often wrong, as it is with homosexuals. Both are often vigorous, masculine-looking men. Some transvestites with feminine gestures and appearances try to overcome these traits when wearing normal masculine attire. In addition, most transvestites express extreme repugnance for the suggestion of homosexual practices. Havelock Ellis claims there is no more homosexuality in transvestism than there is elsewhere.

Most writers, including Margaret Mead and Lewis Terman, are convinced that differences in behaviour come through psychological, social, and cultural conditioning rather than through an innate predisposition—the differences are a result of habit or training. Differences in interests are accounted for by the environments given to each sex in our system of society.

It would appear that there would be fewer transvestites if some mothers did not bring up their sons as girls. In many documented cases the patients were brought up as girls for a number of years. Hence it is argued that all boys should have an early haircut and wear real masculine attire as soon as possible. It is only too true, although most unfortunate, that when some mother desires a girl and a boy arrives, the mother is sometimes strongly inclined to keep the child feminine as long as possible. Such a son may pay a price for the caprice of his mother.

The Freudian school has made much of its theories of anal, genital, phallic behaviour and so on. It should be stressed that the first few years of life are tremendously important in developing the characteristics which will influence the individual for the rest of his life.

Transvestites themselves claim they are far more common than is usually supposed. Many of them claim that the "true" transvestite is not an exhibitionist, impersonating in public, sharing his experiences with others, but rather a solitary person who gains his greatest thrill through dressing as a woman in the privacy of his own home.

TREATMENT OF SEXUAL OFFENDERS

In common with most of the world, New Zealand has so far devised no specific treatments for sexual offenders.

In the 1920s penal administrators began to consider the advisability of segregating homosexuals. This was impossible within the separate institutions, but eventually in 1927 New Plymouth was set aside as a prison for convicted homosexuals. It remained so until 1952. In that year, following a careful appraisal of treatment in New Zealand and overseas, it was decided to abandon New Plymouth as a homosexual institution.

The British Medical Association's pamphlet, *Homosexuality and Prostitution*, and the report of the Wolfenden Committee later, stated their objections to segregation—the former said that segregation was neither practicable nor desirable since it would place a stigma on homosexuals which might confirm them in their resentment against society. The latter saw serious objections to segregation as a discouraging background for treatment and cure.

There has since been no segregation of homosexuals in a particular prison, or segregation of homosexuals within ordinary prisons. A recent study showed that of the prison community in New Zealand 3 percent were men convicted of homosexual acts (about 50 persons). All had been convicted of offences against males under 21 years. No homosexual inmate was serving a sentence for offences against adults alone. Three had convictions against males under 21 years and over 21 years. Fifty were convicted of offences against males under 16 years. Eight were convicted of offences against males and females.

Traditional beliefs, however erroneous, die hard. One of these—that castration or sterilisation removes the urge and the power to indulge in sexual activity—lingers long. In the 1920s three New Zealand prison inmates were given permission to be castrated, and some years later one inmate castrated himself with a nail file and survived. More recently several inmates seeking release from their aberration—and from prison—have petitioned for sterilisation by surgery or other means.

Predictably, after reading of serious sexual assaults, many New Zealand citizens demand castration as a treatment, or a punishment, or both. The Wolfenden Committee commented on castration as a treatment for sexual offenders: "We . . . understand . . . that there is no guarantee that this operation removes either the desires or the ability to fulfil them." Many centuries earlier Roman Emperors found to their sorrow that their eunuchs were by no means impotent.

Today in Denmark, voluntary castration is encouraged at Herstedvester, a special institution for sexual offenders, and Dr Stürup is in no doubt that such an operation is justified.³⁶ But there is considerable disagreement among psychiatrists.

³⁶Stockdale, E., *The Court and the Offender*, Gollancz, 1967, p. 112.

Hormone treatment to modify sex urges is sometimes advocated, but almost all medical opinion is agreed that such treatment is experimental and its outcome unpredictable. The use of hormones is as likely to increase sexual drives as to diminish them. In any case, to increase or to diminish may be equally disastrous. The person whose desires are diminished may—like many violent sexual offenders—become more rapacious and violent through sheer sexual inadequacy.

The campaign to treat rapists and child seducers by castration and sterilisation is frequently based on a false premise—that such offenders are over-sexed. Often the opposite is true; the choice of a child victim points to the sexual inadequacy and immaturity of the offender.

Recently aversion treatment has been tried with homosexuals and specific types of fetishism. This, and other forms of conditioning, are still in the experimental stage, and much controversy surrounds them. Hypnotherapy is also championed by some psychiatrists. In the Van der Hoeven Clinic, in Utrecht, several techniques are used with abnormal offenders. Group therapy, psycho-drama, hormone injections, along with individual psychotherapy of an analytic type, provide intensive individual treatment for 85 patients. Each spends at least two hours a week with his therapist. This privately endowed institution was founded in 1953 in the pioneering faith that, curable or not, all abnormal offenders are capable of being treated—and worth treating.³⁷

Clearly, the treatment of sexual offenders is still in an early experimental phase, and to legislate on the basis of current knowledge would be folly. Some American states have regretted panic legislation to deal with "sexual psychopaths" after some serious sexual offences had been committed. The laws now lie unused because of the difficulty of defining sexual psychopath.³⁸ Only the Nazis have practised compulsory castration in our time and it is doubtful whether any modern civilised state would contemplate this treatment.

Until the sexuality of man is more completely understood, and legislation and treatment are scientifically based, New Zealand will continue to rely mainly on individual and group therapy for sexual as for other offenders. There may be a place for voluntary treatment of an experimental nature carried out under careful medical control. Such treatment as the use of stilboestrol for aggressive, repeating sexual offenders is suggested by Clifford Allen.³⁹ But each case should be assessed on its merits and treatment should be voluntarily undertaken without the oblique blackmail of an early release.

The treatment of sexual offending provides a forum for the release of intense human emotions, ranging from naive sentimentality to primitive sadism. This is especially true when a child has been the victim of rape, or when death accompanies a sexual offence. As C. H. Rolph

³⁷Cf. Sington, E. and Playfair, G.: *Crime, Punishment, and Cure*, Secker and Warburg, 1957, p. 263 et seq.

³⁸Sutherland and Cressey: *Principles of Criminology*, Lippincott, 1955, p. 127.

³⁹Allen, C., *A Textbook of Psychosexual Disorders*, O.U.P. 1962, p. 362.

says, "The heavy preponderance of sexual offences among those that excite the appetite for quick violence in punishment has an explanation that is plain to all but those who urge it".⁴⁰ Punishment there must be, and society must express its revulsion at certain acts. Society, too, must be protected against abnormality that hurts other people.

In company with many psychologists, Claude Mullins, an eminent English magistrate, makes the further point that "wise punishment . . . often satisfies the unconscious needs of the delinquent".⁴¹ He goes on to say that everyone is fearful of his own aggressive urges. "The absence of punishment for a proved or admitted offence can easily increase the fear". Those who, like Mullins, advocate positive remedial treatment as well as punishment for sexual and other offenders represent a balanced and very much needed core of informed theory in a vexed field of penology.

APPENDIX

Statistical Analysis of Incidence of Rape and Allied Offences, 1920-1930 and 1950-1960

The following tables were compiled in 1961 to indicate the incidence of rape, attempted rape, and assaults with intent to commit rape over two periods 30 years apart.

Analysis is difficult because age groups were different, and Maori statistics were not collated until 1926. It is doubtful whether the years 1920-1930 provide a valid comparison with the recent years 1950-1960, but the figures are included if only for their historical interest.

Rape, Attempted Rape, and Assault with Intent to Commit Rape: For the period 1920-1930, and for 1950-1960

From 1920 to 1930, 67 persons were found guilty of these offences, whereas from 1950 to 1960, 175 persons were convicted. The increase for the 11 year period 1950-1960 over the earlier period in the number of rapes was, therefore, 161 percent, while the rise in the general population was 52 percent.

TABLE 1—Increase in Male Population

		1926	1956	Increase	%Increase
Non-Maori	..	686,384	1,023,122	336,738	49.1
Maori	..	33,258	70,089	36,831	110.5
Total	..	719,642	1,093,211	373,569	51.9

⁴⁰Rolph, C. H., *Common Sense about Crime and Punishment*, Gollancz, 1961, p. 130.

⁴¹Mullins, C., *Crime and Psychology*, Methven, 1949, p. 107.

TABLE 2—Type of Offence

			1920-30	1950-60
Rape	..	..	26	79
Attempted rape	..	..	26	39
Assault with intent to commit rape	..	..	15	53
Aiding rape	..	..	..	1
Aiding attempted rape	..	..	..	1
Housebreaking with intent to commit rape	..	..	..	1
Attempting to stupefy with intent to commit rape	..	..	..	1
Total	..	..	67	175

Thus, while the general population rose by 52 percent, the number of rapes rose by 161 percent. Put another way (and using population figures of 1926 and 1956 as middle years for each period), while the rate of offending per 100,000 males was 9.3 during the 1920-1930 period, it was 15.5 in 1950-1960.

Ethnic Group of Offenders

Definitions: "Maori" includes half-caste or more and also includes other Polynesians. "Non-Maori" includes all Europeans and less than half-caste Maoris.

TABLE 3

		1920-1930		1950-1960		Numerical Increase	Percent Increase
		No.	Percent of total	No.	Percent of total		
Maori	..	12*	17.9	88	51.8	76	641.7
Non-Maori	..	55	82.1	87	49.2	32	56.4
Total	..	67	100.0	175	100.0	108	161.2

*Maori figures incomplete before 1926.

Cases of Rape, Attempted Rape, and Assault with Intent to Commit Rape, Tried in the Supreme Court 1920-1930

During the 11 years 1920-1930 (inclusive) 67 persons were convicted in the Supreme Court for these offences.

Rape	..	..	..	26
Attempted rape	..	..	..	26
Assault with intent to commit rape	..	..	..	15
Total	..	..	..	67

Because the files of a number of these offenders have been destroyed, only those particulars set out in the "Return of Prisoners Tried" could be noted. For this period, therefore, no information is available about the place where the offence occurred or the age of the victim: neither do we know other factors in the offence, such as alcohol or the complicity of the victim. However, such information as has been collated should be sufficient for purposes of comparison.

The following table shows the number of persons in each rape incident:

Year	Number in Each Rape Incident			Total Persons
	1	2	3	
1920	3	..	..	3
1921	5	..	..	5
1922	5	..	..	5
1923	7	..	..	7
1924	2	..	..	2
1925	6	1	..	8
1926	5	..	..	5
1927	9	1	..	11
1928	8	..	..	8
1929	4	1	..	6
1930	4	..	1	7
				—
				67

It will be seen that during these years there were only four incidents (involving nine persons) that could be described as gang rapes. In one case for which a file was available it seems that at least three men, if not four, were involved, but for some reason only one was charged. Whether there were other similar instances during the period cannot be established.

The median age for all offenders was 23 years 4.5 months. The ages of those concerned in "gangs" were:

16 years ..	2
18 years ..	2
19 years ..	2
20 years ..	1
21 years ..	1
29 years ..	1
	—
Total ..	9

Offending in groups tended to occur in the 21 and under age group.

The following table analyses the ethnic groups into which offenders between 1920 and 1930 were divided. Ethnic grouping in the "Return of Prisoners Tried" is not likely to be absolutely correct, but it should serve adequately for the purposes of comparison:

		N.Z. European	N.Z. Maori	Aust.	U.K.	Other European	U.S.A.	Indian	Total
1920	..	2	1	..	..	..	..	..	3
1921	..	3	..	2	..	..	..	..	5
1922	..	1	1	1	1	..	..	..	5
1923	..	4	2	..	..	1	1	..	7
1924	..	2	..	..	..	..	..	..	2
1925	..	5	3	..	..	..	..	..	8
1926	..	2	1	..	2	..	..	..	5
1927	..	8	1	..	1	1	..	..	11
1928	..	5	3	..	..	..	..	..	8
1929	..	4	..	..	1	..	..	1	6
1930	..	6	..	1	..	..	..	..	7
Total		42	12	4	5	2	1	1	67

Of the nine "gang" members, two were Maoris, one was Australian, and six were European New Zealanders.

Sentences were imposed as follows:

No. of Years	Imprisonment (Hard Labour)								Reformatory Detention					Borstal			Prob- ation	Other
	2	3	4	5	6	7	10	15	2	3	4	5		2	3	5	3	
1920	1	..	1	..	..	..	1	..	..	..	..	..	..	..	..
1921	1	..	..	..	..	2	2	..	..	..	..	..	..	..	..	..	..	..
1922	..	3	..	..	1	1	..	..	..	..	..	..	..	..	..	..	..	..
1923	1	..	1	1	1	..	..	..	2	1	..	..	..	..	..	..
1924	1*	..	..	..	..	1	..	..	..	..	..	..
1925	2	..	1	..	1	1	2	..	..	..	..	..	..	..	..
1926	1	3	..	..	..	..	..	..	..	1	..	..	..	..	1	..
1927	..	2	..	3	..	2	3	..	..	..	..	..	..	..	..	..	..	1†
1928	..	1	..	..	..	..	1	..	..	2	..	..	..	1	1	1	..	..
1929	..	1	1	1	..	..	..	..	..	1	1	..	..	1	..	..	..	1‡
1930	3	1	1	1	..	..	..	..	..	..	..	..	..	1	..
total	1	7	3	13	3	9	9	1	1	6	3	3		2	1	1	2	2

10 strokes

†one year H.L. + two years R.D.

‡to come up within two years if called.

	% of Total	
Total number sentenced to imprisonment		
under five years	11	16.4
Total number sentenced to imprisonment for		
five years or more	35	52.2
Sentenced to Reformatory Detention ..	13	19.4
Sentenced to Borstal	4	6.0
Sentenced to Hard Labour and Reformatory		
Detention	1	1.5
Probation	2	3.0
Come up if called	1	1.5
	67	100.0

Ethnic Group

Year	N.Z. European	N.Z. Maori	Aust- ralian	Irish	United Kingdom	Other European	Pacific Islands	Total
1950	7	4	..	1	..	..	..	12
1951	4	6	1	..	..	..	..	11
1952	6	15	..	..	1	..	1	23
1953	10	10	..	..	..	..	..	20
1954	6	7	1	..	..	..	..	14
1955	4	4	..	1	..	..	..	9
1956	3	15	..	..	2	1	2	23
1957	4	7	..	..	..	..	2	13
1958	14	4	1	..	1	..	..	20
1959	7	2	..	..	..	..	1	10
1960	9	9	..	..	..	2	..	20
Total	74	83	3	2	4	3	6	175

A comparison was then made with the total male population of New Zealand and the following table results:

Year	Male European Population	No. of N.Z. European Offenders	Male Maori Population	No. of Maori Offenders	Rates per 100,000 Population	
					European	Maori
1950	897,618	7	57,809	4	0.78	6.90
1951	913,852	4	59,230	6	0.44	10.10
1952	936,338	6	61,130	15	0.64	24.60
1953	961,389	10	63,074	10	1.05	15.90
1954	984,822	6	65,141	7	0.61	10.70
1955	1,004,530	4	67,560	4	0.40	5.90
1956	1,024,427	3	69,856	15	0.30	21.50
1957	1,044,134	4	72,552	7	0.39	9.65
1958	1,069,666	14	75,004	4	1.31	5.34
1959	1,092,284	7	77,723	2	0.64	2.58
1960	1,116,572	9	81,991	9	0.81	11.00

*The rates for 1956-1960 are lower than in the first table because they are inclusive of the total population.

There are significantly more non-Maoris in the 30-and-over age group and in the 25-30 age group. In the age group 15 and under 25 Maoris predominate. It can confidently be said that the Maoris in the younger age group offend more often than their European counterparts, while Maoris in the older age group are less likely to commit these offences than Europeans.

While it is true that there is a greater proportion of people between the ages of 15 and 25 among Maoris (23 percent of the 1958 total Maori male population as against 14 percent of the non-Maori population), the overall Maori figure is still greatly in excess of the non-Maori figure. In other words, one would expect more younger Maoris than older Maoris to be convicted, because there is a greater number, proportionately, of them. But this difference in the age construction of the Maori population does not explain the disproportionate Maori share of the offences.

Rates Based on the Number of Males Between the Ages of 15 and Under 45 in the Maori and Non-Maori Populations

Year	No. of Non-Maori Males Aged 15-45	No. of Non-Maori Rapes	Non-Maori Rapes per 100,000 Male Population Aged 15-45	No. of Maori Males Aged 15-45	No. of Maori Rapes	Maori Rapes per 100,000 Male Population
1950	390,100	8	2.05	25,125	4	15.9
1951	391,900	5	1.28	24,750	6	24.2
1952	397,000	7	1.76	25,460	16	62.8
1953	404,600	10	2.47	26,200	10	38.2
1954	409,910	7	1.71	27,160	7	25.8
1955	415,300	5	1.20	28,280	4	14.1
1956	421,200	6	1.42	28,810	17	59.0
1957	428,600	5	1.17	29,800	8	26.8
1958	436,200	16	3.67	30,650	4	13.1
1959	441,700	7	1.58	31,610	3	9.5
1960	445,500	11	2.47	32,530	9	27.7

The following are rates for each period based on the number of rapes per 100,000 of the male population:

	1920-30	1950-60
Rapes by Maoris per 100,000 Maori males	36.0	127.0
Rapes by non-Maoris per 100,000 non-Maori males	8.0	8.0

The non-Maori rate has, on this basis, remained constant, whereas the Maori rate has risen some three and a half times since 1920-30. During the 1920-30 period the Maori rate was four and a half times that of the non-Maori rate; over the period 1950-60 it rose to nearly 16 times that of the non-Maori rate.

To attempt to account for the disparity would be extremely difficult. Many sociological factors would need to be studied: the rapidly increasing urban settlement of the Maori with its resultant disturbance of family and tribal patterns; the loss of the authoritarian elders; culture conflicts; earlier sexual maturity in Maoris, together with the European restrictions on early marriage; the effect of a world war on moral values—the list would be endless and based on mere conjecture.

The Hunn Report⁴² listed some causative factors in Maori crime, but it pointed out that nobody has yet managed to identify the real causes. In other countries attempts have been made to reveal similar factors with little success.

"Gang" Offences

Between 1920 and 1930 "gangs" formed 13.4 percent of the total number of offenders; between 1950 and 1960 "gangs" represented 41.7 percent of the total.

The largest group in the 1920-30 period consisted of only three members; in the 1950s the gangs were larger and more numerous. In the 1920s only two Maoris were involved in gang offences; in the 1950s 55 of the 83 Maoris convicted of rape were involved in gangs. Of the total Maori offenders, 66.3 percent were associated with gang attacks.

The number of gang offences over the decade increased significantly. The most disturbing feature of the composition of these gangs was again the high proportion of Maoris. Since 1961, there has been a reduction in gang rapes.

Ages of Offenders

Ages of offenders remained much the same. The median age for 1920-30 was 23 years 4.5 months and for 1950-60, 21 years 9 months.

During both periods participants in gang offences were predominantly in the under-21 age group.

An examination of sentencing policy during the two periods shows:

	1920-30	Percent- age of Total	1950-60	Percent- age of Total
Imprisonment for less than one year	Nil	..	12	6.9
Imprisonment for one to five years	24	35.8	75	42.9
Imprisonment for more than five years ..	22	32.8	5	2.9
Reformative Detention or Corrective Training ..	13	19.4	27	15.4
Borstal	4	6.0	41	23.4
Probation	2	3.0	15	8.5
Other*	2	3.0	Nil	..
Total	67	100.0	175	100.0

*Included one who was to come up if called upon and one who received one year H.L. plus two years R.D.

During the twenties and early thirties several men were sentenced to hard labour and flogged with 10 strokes, the heaviest sentence being one of 15 years hard labour and 10 strokes for the rape of a child of nine years. (In 1904 a man was sentenced to life imprisonment for a similar offence.)

It is evident that sentences nowadays are generally shorter and sentences of over five years imprisonment have become relatively uncommon. By contrast, about one-third of offenders during the 1920s could expect to receive a sentence of more than five years. However, three child rapists convicted in 1965 and 1966 received sentences of seven, ten, and ten years respectively.

⁴²Report on Maori Affairs, Government Printer, 1964.

The increase in the number of rapes committed by Maoris contributes heavily to the total number of rapes for the 1950-1960 period. The following table shows ethnic grouping by age for the period 1950-1960:

TABLE 4

Ethnic Group by Age ("Maori" includes Islanders) Offenders Convicted of Rape 1950-1960 (till August 1961)

Age Groups (Maoris and Non-Maoris)

Year	15-20		20-25		25-30		30-35		35-40		40+		Total	
	M.	Non-M.	M.	Non-M.	M.	Non-M.	M.	Non-M.	M.	Non-M.	M.	Non-M.	M.	Non-M.
1950	2	2	2	..	2	3	..	1	..	..	2	4	8	8
1951	..	1	4	2	2	2	..	..	..	..	..	6	5	5
1952	1	1	13	..	1	2	1	1	1	..	2	16	7	7
1953	5	3	4	6	..	1	..	..	1	..	..	10	10	10
1954	..	..	5	4	2	1	..	..	1	..	1	7	7	7
1955	3	..	1	3	..	..	1	..	..	..	1	4	5	5
1956	10	1	4	1	2	3	1	..	1	..	..	17	6	6
1957	5	..	1	1	1	1	1	..	1	..	2	8	3	3
1958	..	5	1	3	1	4	1	..	1	..	4	4	16	16
1959	1	5	..	..	1	..	..	1	1	..	1	3	7	7
1960	1	3	6	3	1	3	..	2	1	..	..	9	11	11
1961	18	5	8	1	1	..	..	1	..	1	..	27	8	8
Total	46	26	49	24	12	20	4	6	4	6	..	13	115	95

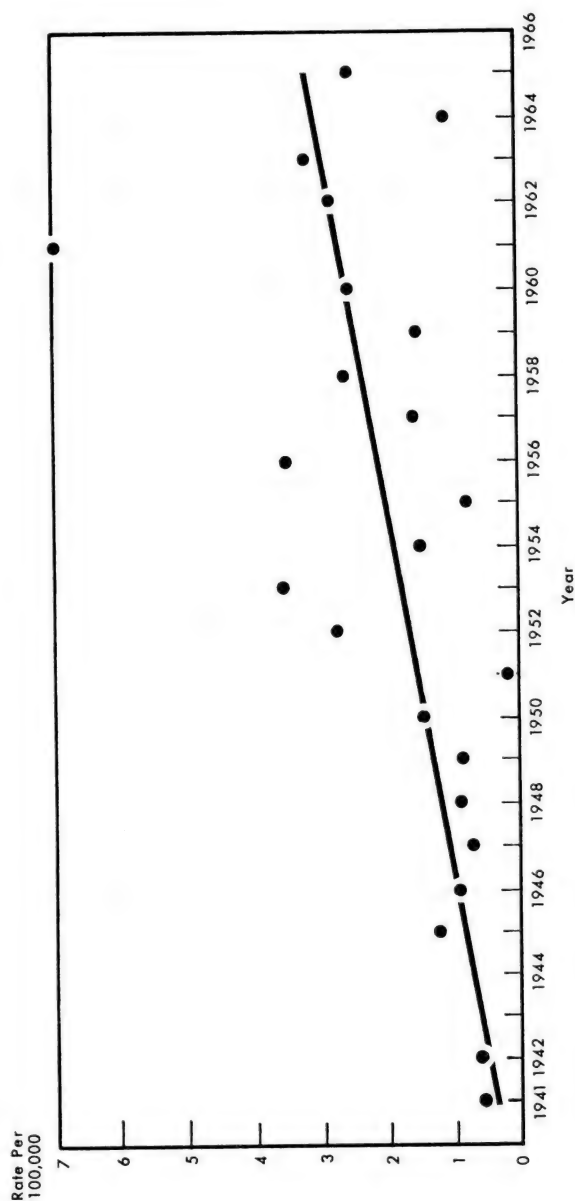
If the age groups from 30 upwards are combined to give large enough numbers for analysis, the following table results:

TABLE 5

	15-20	20-25	25-30	30 and Over	Total
Maori	.. 46	49	12	8	115
Non-Maori	.. 26	24	20	25	95
	72	73	32	33	210

chi-square=23.19 d.f.=3 P is less than .01

NUMBER OF PERSONS CONVICTED IN THE SUPREME COURT OF RAPE OR ATTEMPTED RAPE 1941-1965
RATE PER 100,000 MEAN ANNUAL POPULATION, MALES AGED 15-59 YEARS



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Chapter 5

VIOLENT OFFENCES TO THE PERSON

Two main theories are concerned with the origins of violence. Some believe violence to be a learned reaction, a response to the need for survival. This theory lends strength to the view that since violence is learned it can be unlearned by sanctions, or moral teaching, or both. Hence the traditional, empirical treatment of the potential, or actual, offender by deterrent, punitive, and reformative measures.

The second theory maintains that the degree of aggressive capacity in each individual is inborn and unique and that in some persons it is present in excess. Menninger and others have described a group with a surcharge of excessive energy that periodically expresses itself in naked and archaic aggression.¹ The two theories are not necessarily mutually exclusive.

Human aggression is expressed in many ways, sometimes with society's approval. Terence Morris goes so far as to say that the essence of civilised society may be said to be the control of violence so that its use is limited to the State.² In wartime, violence against the enemy is praised and non-violence derided. In certain sports physical aggression is expected and applauded. Apart from such approved outlets the expression of violence is generally regarded as an offence, ranging in increasing seriousness from common assault to murder. Some of these offences, such as homicide, suicide, sexual violence, violence to children, abortion, and common assault, are discussed in other sections of this book.

THE LAW³

Offences against the person are dealt with mainly in the Crimes Act 1961—in Part VII (Crimes Against Religion, Morality, and Public Welfare), which has a section dealing with sexual crimes, and Part VIII (Crimes Against the Person). In the latter group, murder and manslaughter involve the most serious consequence of all—the death of the victim.

¹Satten, J., Menninger, K. M., Rosen, I., and Mayman, M. "Murder without Apparent Motive. A Study of Personality Disorganisation", *American Journal of Psychiatry*, cxvii (July 1960), 48.

²*Changing Concepts of Crime and its Treatment*. Edited by H. J. Klare, Pergamon Press, 1966. Page 25.

³See the Law of Murder section in Chapter II, p. 27 et seq.

Manslaughter is the name given to a very wide variety of acts, ranging in seriousness from a killing which is close to murder, to a case where death is caused by negligence; the only common factor is that a death is caused. It may be questioned whether such an approach embodies a sound principle. The creation of several distinct offences, graded according to the nature and gravity of the act which resulted in a death, would, without lessening the effectiveness of this area of the law, be fairer to the person charged and probably more acceptable to the public and to the jury which represents it. In fact, it is to the attitude of juries that offences of reckless, dangerous, and careless driving causing death—which could all be charged as manslaughter—owe their separate existence under the Transport Act.

The general definition of manslaughter is contained in s. 171 of the Crimes Act 1961, where it is negatively defined as culpable homicide not amounting to murder. (Culpable homicide is defined in s. 160, and murder in ss. 167 and 168, of the same Act.) In addition s. 169 provides that culpable homicide which would otherwise be murder may be reduced to manslaughter if the person who caused the death did so under provocation. From these provisions emerge the three broad categories into which manslaughter cases fall:

- (a) An intentional killing under provocation;
- (b) Killing by an unlawful act (a category which may include some types of murder);
- (c) Killing as the result of negligence.

Provocation is discussed in the chapter on murder.

Killing by an unlawful act will be murder if the circumstances are such as to bring the case within the definition of murder. Otherwise it will be manslaughter. Whether the words "unlawful act" are limited to conduct that is criminal is not clear but, whatever their meaning in this respect, the Court of Appeal has held in *R. v. Grant* [1966] N.Z.L.R. 968 that the act must be one likely to do harm to the deceased or to some class of persons of whom he was one.

The degree of negligence required to support a manslaughter charge in New Zealand appears to vary according to the nature of the case. The Crimes Act contains a number of provisions laying down a duty of care in particular circumstances. For example, s. 156 imposes on anyone having under his control anything which may endanger human life a duty to use reasonable care to avoid danger.

It has been held by the Court of Appeal in *R. v. Storey* [1931] N.Z.L.R. 417, following *R. v. Dawe* [1911] 30 N.Z.L.R. 673, that it is this s. 156 which fixes the standard of care applicable in a manslaughter case based on alleged negligent driving and that, accordingly, the standard in such cases is the same as the standard of care in civil cases. The position is no different if the charge is negligent (now careless) driving causing death.

Where, however, no statutory provision defines the standard of care, it appears from *R. v. Burney* [1958] N.Z.L.R. 745, that, as in England, a high degree of negligence must be shown.

VIOLENCE

This chapter sets out mainly to discuss serious anti-social expressions of non-sexual violence. (The use of the term non-sexual does not suggest that sexual factors are absent from all cases cited. It does exclude from consideration the kind of direct sexual violence discussed in the preceding chapter.) The concept of seriousness varies according to the situation of the victim. A man knocked down in the course of a drunken brawl may regard the violence he experienced as a commonplace hazard. The policeman assaulted physically in the course of an arrest may regard the attack as serious, although no major injuries are sustained. A wife's estimate of the seriousness of her husband's violence will often depend upon the habitual nature of such attacks and her previous experience of them.

For the purpose of the present study, we are guided in our estimate of seriousness by the nature of the injuries sustained, the severity of the sentence and, on occasions, by the offender's history of violence. Manslaughter has already been mentioned in the context of murder, since in many cases persons charged with murder are eventually convicted of manslaughter. But it is also true that in some instances manslaughter is the outcome of an assault which probably did not intend homicide. Some cases are therefore cited.

While these instances mainly comprise individual manifestations of violence, violence sometimes erupts in a more spectacular manner. On 20 July 1965, Auckland Prison was sacked and burned by some 290 inmates. What had begun as an attempted escape by a few inmates developed into a full-scale riot when fires were lit and prisoners had to be evacuated from their cells. The riot which began at 2 a.m. on the 20th ended in the forenoon of the 21st by which time most of the prison buildings were gutted. No lives were lost, and no prisoners escaped.

The Auckland Prison riot was soon followed by imitative action at Paparua Prison, Christchurch. A fight broke out at a chapel service in which several officers were injured. One wing of the prison was set on fire and the revolt was quelled only after tear gas was used. Following the two prison riots several men were convicted of violence. These are examples of group violence.

Six earlier outbreaks of group violence in New Zealand are described in *An Encyclopaedia of New Zealand* but, as the introductory paragraph says: "New Zealanders are, generally speaking, a law abiding

people...disturbances of the peace are rare and the few riots which have occurred stand out prominently in our history."⁴

Group violence is also exhibited in the gang rapes discussed in the preceding chapter. Fortunately, New Zealand up to the present has been free of other forms of serious gang violence, although groups of young people have occasionally shown aggressive tendencies.

The situation, however, has encouraged two schools of thought. One takes the view that group violence exists and that it is serious and disturbing. This view cites incidents in Auckland, Hamilton, Hastings, and Christchurch as evidence of the existence of groups which are prone to violence. It is held that their violence is not so much cultural as situational and accidental—at least at the outset—later developing into characteristic gang aggressiveness.

The other view is that there is no evidence of group activity, in the sense of gangs, operating in New Zealand cities. There may be groups whose conduct at times appears to be aggressive, but apart from these occurrences, such group violence as has occurred has been involuntary and related to the time, place, and other circumstances. The isolated incidents cannot be ascribed to gangs, as in some overseas cities.

STATISTICS

Individual cases of serious violence in New Zealand receive, as in most countries, publicity commensurate with society's fear and abhorrence of this type of behaviour and with its demand for retribution. As a result the incidence of violence may appear greater than it is. Although to victims of violence statistical rates are of little comfort, it can be said that the rate of violent offending in New Zealand is small. A peak of 14.7 per hundred thousand was reached in 1961—the year of the gang rapes—but the rate had almost halved again by 1965. (See Table 1, p. 210.) New Zealand has not so far experienced the increase in violent offending found in the United Kingdom and other countries.⁵

New Zealand figures gain added significance from the fact that violent offending, by its very nature, is likely to come to official notice, and that convictions follow in a high proportion of reported cases. As in England and Wales, a large part of violent sexual offending is committed by males under 25 years. But whereas in England and Wales increases in all age groups have occurred up to 1965, in New Zealand, with the decline in gang rapes, the figures for violence had reverted in 1965 to a pre-1960 level.

CLASSIFICATION

As with many of the crime groups in New Zealand, numbers are so small as to make clear-cut personality classification wellnigh impossible.

⁴*An Encyclopaedia of New Zealand*. Government Printer, Wellington. 1966. Volume 3. Page 85.

⁵Cf. McClintock, F. H., *Crimes of Violence*, McMillan 1963. Page 23.

In group violence, hysteria, heightened excitement and the stimulus of the peer group induce behaviour which would normally not be contemplated. Fear of ridicule or retaliation drives the group member to bravado or criminal behaviour foreign to his normal habits.

There are four main groups of violent offenders. First there are those who espouse a sub-culture where violence is an accepted way of life. In this milieu aggression is perpetrated for its own sake, and not as a means to further ends, as in rape or robbery. The victim is not necessarily well known to the offender and may be a chance acquaintance or even a stranger.

An example of this type of offender was M., the sixth child in a family of eight. His father—a coal miner—had to give up work because of illness, and his mother worked as a cleaner. There is evidence that M. did not get on well with his parents. He left school with poor achievement due to limited intelligence, and worked in the coal mines for 12 months. This was to be his longest consistent employment. His job tolerance diminished steadily until he finally became unemployed.

He was 17 when first convicted. He had entered a store and asked to use the telephone. When his request was refused he threw the storekeeper to the ground and then attacked his wife. The probation officer reported that M. was renowned locally for his behaviour as a thug and exhibited bullying and aggressive ways. He was sentenced to Borstal training. There he was immediately involved in fighting, threatening, and general indiscipline in the institution. He was "on report" on 16 occasions in 18 months, before being transferred to medium security where for six months his behaviour was good. The improvement, however, did not last after release and he was recalled after four months. He had been convicted of assault and two charges of wilful damage.

A fortnight after his second release M. received a sentence of 18 months imprisonment for breaking, entering, and theft, and interfering with a motorcar. The offences were committed in the company of three others. In spite of two prison reports for threatening and insolent behaviour he was transferred to lesser security, but he was soon returned to maximum security for disobedience and assaulting officers. Four months later he and six others began a fight in the prison yard, and the superintendent strongly suspected they intended to start a riot. Five more acts of indiscipline followed before M.'s final release.

Three months later he was fined £20 for assault and soon after received a sentence of six months imprisonment on two charges of assault. This was followed by a further sentence of nine months. During each of these terms he was prominent for aggressive and violent behaviour and was an active participant in the Paparua Prison riot.

M. had married during one of his periods of freedom, but the marriage, predictably, was short-lived. He was released from his nine months sentence in October 1965. On the following Christmas Eve he and a group of friends arrived at a private party where they continued to drink alcohol, as they had been doing for most of the day.

Then M., calling on his group for assistance, began systematically to wreck the room. Tables and chairs were thrown out of the windows and a man who remonstrated was assaulted and thrown out. In a more recent assault he rendered a detective unconscious with a "king hit". For this he was sentenced to prison for one year, and his early prison conduct was such as to necessitate his transfer to maximum security.

Such consistent and indiscriminate violence is fortunately rare in the New Zealand community. Persistent assaults abound, but few are as serious as M's record. Alcohol was associated with all the offences he committed outside prison, and both his addiction and his subsequent violence seem to point to more basic problems. Although unable to get alcohol in prison, his aggressive behaviour towards fellow inmates as well as towards officers indicates that the effects of alcohol are not the cause of his violence. This sort of case may need psychiatric observation and suitable conditioning in an effort to end such anti-social behaviour.

In the second group of violent offenders are persons who commit acts of violence in the act of robbing, or in committing a sexual offence.

Violence is frequently precipitated by fear of apprehension, or in an attempt to make a get-away. A startled thief or burglar often tries to fight his way out of his situation. A thief may render his victim insensible and make his escape. In such cases, acquisitive and destructive aggression meet and find full expression.

W. was born with deformed hands. His upbringing was poor and primitive, his intelligence below average. To compensate for his disability, he began early to develop his physical strength and became a powerful young man. His muscular body had to be suitably adorned, and clothing and other perquisites required more money than W. could earn. He took to stealing and began a recidivist prison career.

He seemed to enjoy prison life and accepted with boyish pride the quips of staff and inmates about his bulging muscles. On release he went to "purchase" a large stock of clothes (he said he was a newly-arrived boxer from Fiji) and, when the salesman had packed everything, W. beat him into unconsciousness.

A third group of offenders consists of the situationally violent—persons who erupt into unaccustomed violence out of extreme fear, or as a result of considerable provocation or jealousy.

Such was a case involving two youths convicted in 1953. The youngsters, aged 17 and 16 years, were keen amateur radio operators. They had purchased equipment with which they broadcast on a radio-waveband which interfered with the radio communications of a nearby Air Force base. A radio inspector warned them that they had committed an offence, the penalty for which was a fine of £50.

The youths, thinking they were in very serious trouble and afraid that their parents would be told, decided to hide in the bush; to support themselves, they stole rifles, ammunition, and camping gear from shops in a nearby town.

These offences were discovered and when a net began to close around them, the youths used the guns to shoot and wound a policeman and thus make good their escape. They were later captured without doing further harm. The presiding Judge, greatly daring, sentenced them to probation. They have not been subsequently convicted.

Another case of unprovoked and uncalled-for violence is illustrated in the case of P. He had gone for a drive in a converted car. The car broke down some miles from town late at night. Looking for a place to sleep, he found a house door unlocked and lay down for the night on a couch in the lounge. After a few hours he awoke and entered the bedroom of an elderly woman. When discovered, he attacked her savagely with his fists and her screams woke her husband in the next room. P. rushed in and attacked the husband as he lay on his bed. The attacks on both old people were marked by abnormal ferocity.

P. then seems to have realised the enormity of his action. He began to make his victims comfortable and helped in telephoning for their doctor before making his escape. Later he professed shame at what he had done.

P. was sentenced to six years imprisonment and had his sentence extended for violence in prison. Nine months after release he was sentenced to six years imprisonment for burglary and car conversion.

Sometimes violence is an involuntary response to a frightening situation where the threat of injury or death seems imminent, particularly after a long period of provocation and threats. A. was a 36-year-old Australian, employed as a ship's steward. During an eventful life he had been taken prisoner of war by the Japanese, and later travelled widely in the Pacific and South-East Asia. In the course of his earlier life he became interested in religion and joined the Theosophical Society. He studied all religions avidly, particularly Yoga, Hinduism, and Buddhism. He had five religious precepts—non-violence, honesty, continence, truthfulness, and sobriety. The captain of his ship called him "the most inoffensive man aboard ship".

For some months A. had been subjected to almost continual derision from some of his shipmates because he was a non-drinker and kept to himself. On the night of the offence two stewards, apparently affected by liquor, went to his cabin deliberately to bait him. One of them wanted a fight and struck and knocked A. to the ground. Since no-one came to his aid, he was terrified. He pulled a knife from his trouser pocket and jabbed it in the direction of his assailant who later died of chest wounds.

A., a small inoffensive introvert man, a mystic who had good reason to fear brutality, responded violently to prolonged provocation. It would appear that the mitigating factors were reflected in a penalty of three years' imprisonment.

Violence, sometimes ending in homicide, is often the result of jealousy. The study of murder presented one case in which two people were murdered out of jealousy. In a similar case, where infidelity was not proved, violence ended in unintended death. B. was a Maori aged 30 living a nomadic rural life. He had a list of some 30 convictions, including two for assault. At a construction project drinking party he met a young Maori girl who stayed with him that night and thereafter. They began a vagrant existence, taking work where it could be found and frequenting drinking parties.

B. planned to marry his *de facto* wife and in a vague way was making preparations to that end. Perhaps to spur him on, she would flirt at times with other men and incite his jealousy. On the night of the offence he had fallen into a drunken sleep and when he woke thought she had been intimate with another man. Accusing her of infidelity, he grabbed a knife and fatally stabbed her.

Finally, some pathologically violent offenders suffer from psychotic or other psychiatric abnormality. The most dramatic examples involve violence in carrying out a sexual offence. At times the harm inflicted is bizarre and sadistic.

R. is of average intelligence but incapable of exercising control over his thoughts and actions. He is immature both intellectually and emotionally, but the most striking feature of his personality is his impulsiveness. He seems incapable of delaying his reaction, is highly unstable emotionally and liable to irrational and uncontrolled outbursts. At times he shows an unhealthy originality, and images of violence and destructiveness occur. He is probably unable to conform easily to social convention.

After a history of 72 convictions for dishonesty and 17 years in prison, R. was convicted of abducting and of having sexual intercourse with a nine-year-old girl. He was sentenced to preventive detention and released after six years. Eleven months later he was convicted of attempted rape, indecent assault on a female, abduction, threatening to kill and assault on a female. For these and other offences he was sentenced to a total of over 12 years imprisonment.

The victim in this case was a girl of 12 years whom R. picked up in his car on the pretence of taking her home. He stripped her, chained her hands, gagged her, and attempted to have sexual intercourse, but failed because of impotence.

A psychologist said of him: "Since he is very dependent, probably because of his unstable early environment, and very demanding for the same reason, he readily antagonises others and seems unaware of

the reaction he provokes. It may be that he seeks such a reaction as a form of punishment." He has been the subject of several attacks by fellow prisoners because of his offences.

Undoubtedly psychopaths are found in the category of abnormal offenders. One of these is T., committed to the care of the Child Welfare Superintendent at the age of five months. A report written when he was 13 says: "His social sense is poorly developed. He is easily led, and his judgment and reasoning are defective. His general conduct shows lack of control and common sense."

Convicted of rape when he was 17, he was sentenced to a five-year term of imprisonment. A psychiatric report at the time said: "The cold indifference he shows is characteristic of the psychopath, with the added limitation of intellectual handicap." Since release from the first prison term, T. has been convicted of assault on eight occasions. Some of these offences have been serious attacks, causing considerable injury. He spent 10 out of 14 years in custody.

As in sexual offending and murder, the violent psychopath poses one of the community's most difficult problems, and constitutes one of its major menaces. Since there is no known curative treatment, the community must protect itself by imposing prolonged imprisonment.

Although the violence discussed so far involved the use of brutal force, it can take other forms. One is by poisoning. Very often poisoning offences, like assaults, are committed within the family setting and frequently are committed by females. Unlike other violence, there may be a large area of violence by poisoning which remains hidden; recently a fatal poisoning revealed a similar offence committed several years earlier which had been treated as death by a natural cause. This case is by no means unique.

Poisoning which did not end in death was carried out by A.C. She was 50 years of age when convicted of administering poison to her third husband with intent to cause inconvenience or annoyance. The marriage had been inharmonious for several years, with differences over control of A.C.'s children by her two previous husbands. Finance and friendships were also bones of contention. A.C. also felt that her husband lacked concern for her physical health. Prolonged quarrelling ended in physical violence on several occasions, and culminated in the administration of poison.

CULTURAL FACTORS

It has been suggested from time to time that cultural or racial factors are present in the incidence of violence. Certainly estimates of offending by race indicate that such influences apply and that Islanders and Maoris offend against the person at a much greater rate than does the European population of New Zealand.

In 1964, Islanders represented about 1 percent of the total population of the country. The rate of sexual offending by Islanders was twice, and of other assaults about 13 times, the statistical expectancy.

In the same year Maoris represented about 7.5 percent of the total Maori/European population. The rate of sexual offending involving Maoris was almost four times, and of assaults over six times, the statistical expectancy.⁶

Perhaps in this sector of offending it is most clearly demonstrated that the criminal acts out those impulses and fantasies which the law-abiding citizen represses and abhors. Impulses to violent crime exist in everyone. That such impulses, and their accompanying fantasies, are viable within normal persons indicates that provoking circumstances or mental or emotional illness may light the fuse of overloaded impulse in anyone. In most people cultural and personal inhibitions successfully combat the impulse, but if restraints are weakened by reason of racial or cultural factors, acting out will take place more readily. Members of racial minorities may have fewer and less effective controls than more sophisticated persons belonging to the numerically dominant race with centuries of continuous culture.

Racial minorities may find themselves in the sub-cultural segment of society where violence is more common and accepted. They may be less able to cope with the breakdown of inhibitions through an excessive use of alcohol. They are often persons in a cultural no-man's-land of changing customs and mores.

This is not to minimise the seriousness of violent offending, or the menace it poses to society. Illegal violence evokes revulsion in any civilised community and punishment is rightly demanded. But cultural and racial factors may be important in understanding the disproportionate number of offences against the person committed by Maoris and Islanders.

STATISTICS

Two tables are given—one of persons convicted in the Supreme Court of all crimes of violence, the other of persons convicted in both Supreme and Magistrates' Courts of four specific violent offences. While the Supreme Court table fluctuates since 1961, the fluctuations are on a downward trend. The trend in the four specific violent offences is consistently downward since 1961.

⁶These estimates are based on figures in the 1964 *Justice Statistics*, Table 28, and population figures in *New Zealand Yearbook* 1965.

TABLE 1
Crimes of Violence—Supreme Court—Persons Convicted
Years 1940–1965

—	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65							
Manslaughter	0	2	3	2	3	5	2	3	1	6	7	8	2	7	4	3	4	8	7	8	6	4	3	4	11	9							
Assaults and wounding ..	30	18	37	19	21	21	29	30	29	34	25	31	36	19	14	14	21	10	17	22	24	44	25	38	24	35							
Traffic offences involving death or injury	44	31	6	7	9	17	24	37	22	19	30	19	20	12	10	5	5	8	6	14	21	21	20	20	3	4							
Rape and attempted rape ..	..	3	3	No figs.	6	5	4	5	5	8	1	16	21	9	5	22	10	17	10	17	47	20	23	8	19							
															Total			36	47	54	68	116	68	85	46	67							
																		Rate per 100,000 males aged 16 years and upwards (1957–65)							4.8	6.2	7.0	8.8	14.7	8.4	10.3	5.4	7.5

TABLE 2

*New Zealand Crimes of Violence**Supreme Court*

Year		Aggravated Assault	Robbery and Stealing from Person	Assault with Intent to Rob	Wilfully doing or Causing Actual Bodily Harm
1957	..	.. 3	8	1	2
1958	..	.. 4	6	4	2
1959	..	.. 10	5	4	3
1960	..	.. 8	3	5	2
1961	..	.. 11	..	9	5
1962	..	.. 9	2	3	1
1963	..	.. 8	1	3	1
1964	..	.. 4	..	2	4

Magistrate's Court

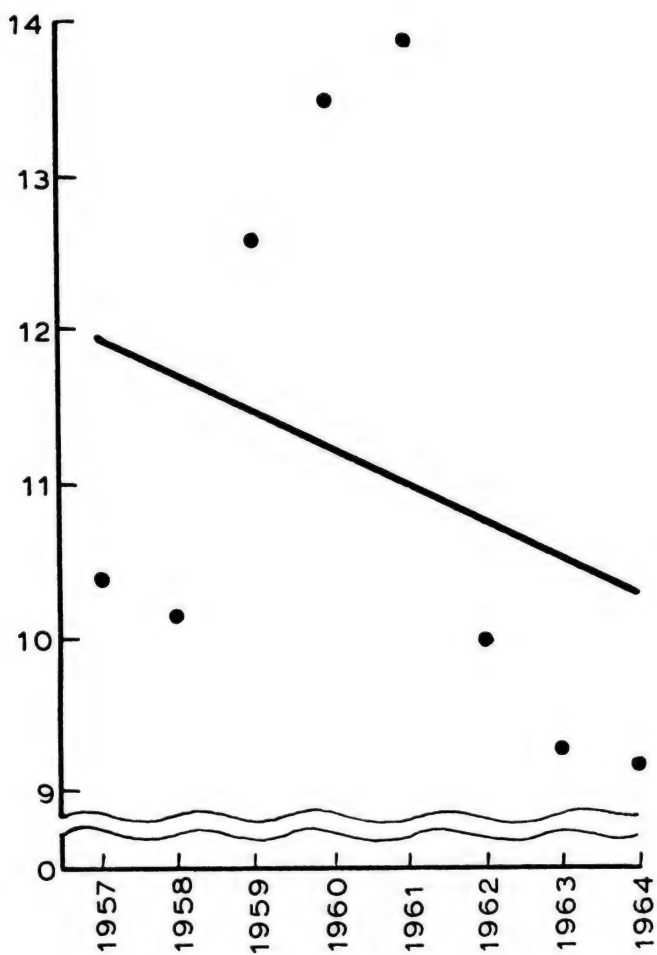
1957	..	.. 24	24	4	11
1958	..	.. 49	17	10	2
1959	..	.. 44	27	..	4
1960	..	.. 52	22	9	4
1961	..	.. 52	21	3	9
1962	..	.. 35	18	1	12
1963	..	.. 31	15	8	10
1964	..	.. 28	19	2	18

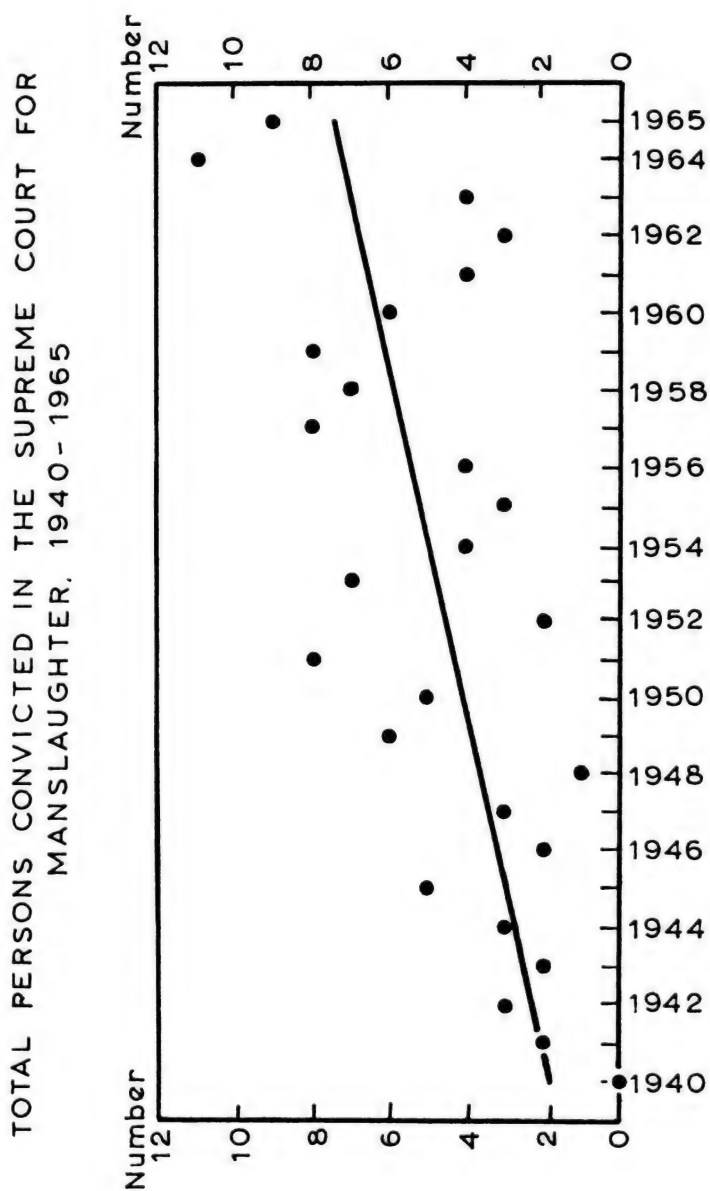
Rate per 100,000 Male Population 16 Years and Upwards

		Raw Total	Rate per 100,000
1957	..	77	10.4
1958	..	94	10.2
1959	..	97	12.6
1960	..	105	13.5
1961	..	110	13.9
1962	..	81	10.0
1963	..	77	9.3
1964	..	77	9.2

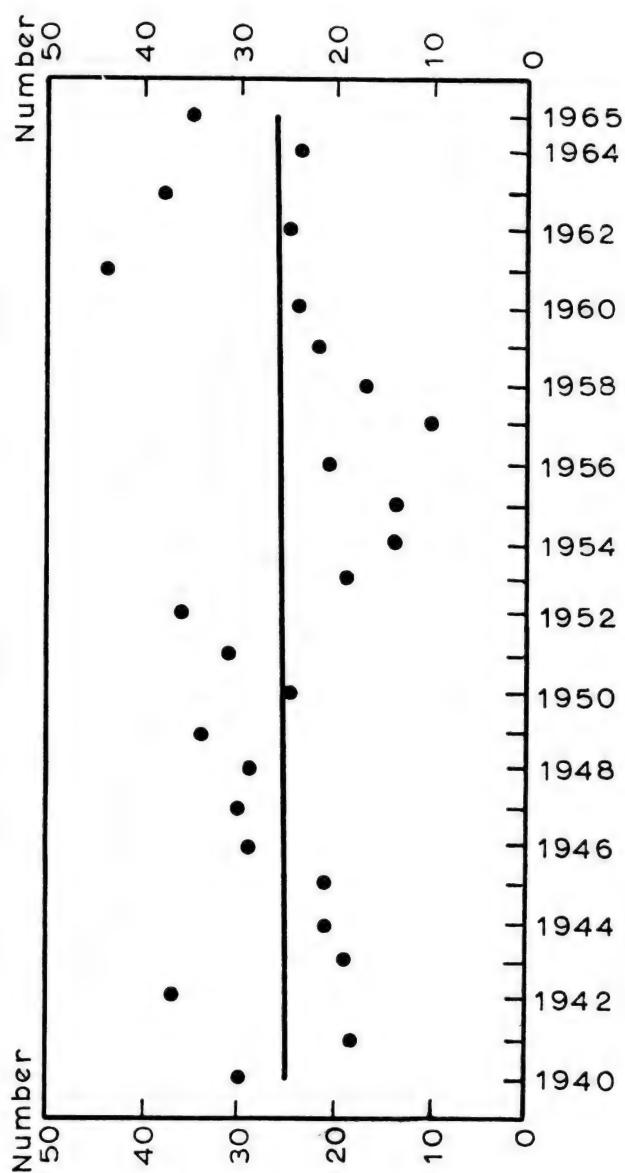
MALES CONVICTED IN THE SUPREME AND
MAGISTRATES COURTS OF CRIMES OF
VIOLENCE, 1957-1964

Rate per 100,000 Mean Annual Population,
Males aged 16 years and over.





TOTAL PERSONS CONVICTED IN THE SUPREME COURT FOR
ASSAULTS AND WOUNDING, 1940-1965



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Chapter 6

CORPORAL PUNISHMENT

Reports of violent crime—and reports of violent sexual crime in particular—frequently evoke a demand for corporal punishment. “A good birching” is seen as a cure for all evils, from child rape to vandalism, and it is frequently advocated by those who write to newspaper editors that wife-beaters, child-beaters, and assaulters be “given a taste of their own medicine”.

The point of view persists despite the fact that corporal punishment has not been available to New Zealand Courts as a penalty for over 25 years; even before its abolition it was available only in distinctly restricted circumstances.

The history of corporal punishment is an interesting one.¹ Changes in the United Kingdom legislation will be described first to make it clear in what ways New Zealand’s legislation differed. The Cadogan Report,² a classic statement on corporal punishment, begins:

“Whipping has been used as a form of punishment in this country from the earliest times, and payments for whipping figure largely in municipal and parish accounts from an early date. When death was the penalty appointed by the common law for felonies, whipping was one of the punishments so appointed for misdemeanours at common law and for those statutory misdemeanours for which no punishment was specifically provided by statute. The punishment was usually administered in public—either at the cart’s tail or, later, at a public whipping post. Women were liable to whipping equally with men—until in 1820 the power to order female offenders to be whipped, either publicly or privately, was abolished by the Act I Geo. IV. C. 57. . . . The movement for penal reform, which had led to the curtailment of capital punishment, was maintained throughout the first half of the nineteenth century and operated in other directions to mitigate the asperities of the old criminal law.”³

¹In 1961 the late Mr A. B. Miller prepared a paper on corporal punishment in which he examined its history and practice in New Zealand, Canada, and the United Kingdom. This section is based on his work. Mr Miller was an Advisory Officer in the Department of Justice from 1956 to his death in 1965.

²Report of the Departmental Committee on Corporal Punishment 1938, Reprinted H.M.S.O. 1960 (England).

³P. 1, Cadogan Report.

In 1824 Parliament curtailed the powers of Justices to deal with vagrancy offences by means of corporal punishment, and during the next 20 years the whole of the criminal law was under continuous review by a series of commissions and parliamentary committees. In 1843 the Commissioners on the Criminal Law submitted their seventh report, in which they gave reasons for not favouring the retention of corporal punishment:

"We have already had occasion to observe that the punishment of whipping is occasionally inflicted and in some instances without regard to any peculiarity in the crime which seems to warrant such a distinction. We see no reason for confining this species of punishment to the limits within which it is now applicable, if resort to it be advantageous either in respect of deterring or correcting offenders. If however, the efficacy be not established by experience, we should certainly be inclined to reject it altogether, except in the instances in which it has lately been imposed by the legislature,⁴ as constituting a signal mark of ignominy. We think that, so far from extending this species of punishment, it would be better to reject it, except in the instance to which we have alluded; and a few, if any others, which it may be proper to mark with signal reprobation. It is a punishment which is uncertain in point of severity, which inflicts an ignominious and indelible disgrace on the offender, and tends, we believe, to render him callous, and greatly to obstruct his return to any honest course of life."⁵

These reports by commissions and committees provided the basis for a series of codifying statutes in 1861, including the Offences Against the Person Act 1861. The only offences for which corporal punishment was prescribed under this Act were child stealing (under s. 56) and certain offences with gunpowder. The words "and if a male under the age of sixteen years with or without a whipping" occur in the section creating these offences. In effect, adult males in the United Kingdom could not be sentenced to corporal punishment at all, except under certain provisions in the Vagrancy Act 1824, the Treason Act 1842, the Diplomatic Privileges Act 1708, and the Knackers Act 1786. These Acts were rarely used, although vagrants were occasionally whipped under the Vagrancy

⁴The Act to which the Commissioners refer here is the Treason Act 1842 which made it an offence to discharge or aim any firearm at the Sovereign, and provided that any person convicted of such an offence might be whipped not more than three times, as well as imprisoned. This Act was passed after incidents in which Queen Victoria appeared to be threatened. The public outcry was so great that Parliament included the section providing for corporal punishment in a bill primarily intended to simplify the procedure for trying such offences. It was enacted primarily as a retributive penalty and its inclusion could be justified only on retributive grounds. As the Cadogan Report puts it, "For any person contemplating a serious attempt on the life of the Sovereign, it would not operate as a deterrent; for if a man is not deterred by the consideration that he will be hanged if his attempt succeeds, he is not likely to be deterred by the thought that he may be flogged if he fails".

⁵P. 2, Cadogan Report.

Act 1824. In 1863 the Garroters Act restored corporal punishment for robbery with violence, and for attempting to choke or strangle to facilitate the commission of an indictable offence. This legislation, like that providing for corporal punishment in the Treason Act 1842, resulted largely from great public alarm—probably much greater than was warranted by the facts—following an outbreak of robbery with violence in London in the latter part of 1862. The “wave of crime” with which it was intended to deal had already passed by the time the legislation was introduced. But, despite the advice of the Home Secretary of the day, who described it as “panic legislation after the panic had passed”, the bill became law.⁶

The general principle was, however, recognised in England in 1861 that whipping was an unsuitable penalty for adults who offended against the criminal law, and until 1948 it was used with restraint as a penalty for the limited range of offences for which it was available. At no time since 1861 has corporal punishment been available in England as a judicial penalty for sexual crime.

The mid-nineteenth century curtailment of the power of the courts to impose corporal punishment on adults did not apply to juveniles, because corporal punishment was regarded as a valuable alternative to imprisonment—then virtually the only other form of punishment available. When one considers the condition of nineteenth century prisons, corporal punishment seems a not unreasonable alternative.

An Act of 1847 (10 and 11 Vic. C. 82) had conferred on Justices the jurisdiction to deal summarily with any child under 14 charged with an indictable offence by a fine, a sentence of imprisonment for up to three months, or by whipping if the child was a male. The Whipping Act 1862 prescribed the kind of instrument and the maximum number of strokes. In 1885 the Criminal Law Amendment Act added a power to order a boy under 16 convicted of carnal knowledge of a girl under 13 to be whipped in lieu of imprisonment.

By 1938 the use of corporal punishment as a penalty for juveniles had almost died out. The more experienced juvenile courts evidently considered that other methods available to them were more effective.

The Criminal Justice Act 1948 (s. 2) finally abolished whipping in the United Kingdom for all offences except certain breaches of prison regulations. In October 1966 the British Home Secretary refused to ratify a sentence of flogging passed on a young prisoner who attacked a prison officer.⁷ The argument has now been closed in the meantime by section 65 of the Criminal Justice Act 1967 (U.K.) which abolished corporal punishment in prisons.

NEW ZEALAND LEGISLATION

In 1867 New Zealand passed the Offences Against the Person Act 1867. This corresponded closely with the United Kingdom Act of 1861

⁶P. 4, Cadogan Report.

⁷*The Economist*, 24 September 1966.

and prescribed whipping for boys under 16 who injured people with explosives or stole other people's children. There was no corporal punishment for adults and none for sexual offences.

In 1868 s. 49 of the Offences Against the Person Act 1867, which covered the offence of indecent assault upon a female or attempting to have carnal knowledge of any girl under 12 years of age, was amended. The maximum punishment was raised from two years' imprisonment to seven years' penal servitude. Another section was added, providing that the offender might be once, twice, or thrice privately whipped. The provisions that the number of strokes might not exceed 50 at each whipping and that a medical officer should be in attendance followed in the remainder of the section. Thus in 1868 in New Zealand adult males could be sentenced to corporal punishment only for indecent assault on a female, or for attempted unlawful carnal knowledge of a girl under 12.

This amendment marked the degree to which opinion in New Zealand differed from that in England. On 11 September 1868, in moving the second reading of the Bill, the Hon. Dr Pollen said that some few months earlier the Grand Jury of the Province of Nelson had made the following presentment:

"That in view of the increasing frequency of indecent offences against the persons of children of tender years, the Grand Jury are of the opinion that an alteration in the law of New Zealand might with very great advantage be made to enable the Judges of the Supreme Court to order the infliction of corporal punishment on persons convicted of such offences."

The presentment had been forwarded with a recommendation from the presiding judge, His Honour Mr Justice Richmond, whose opinion in the matter would no doubt have great weight on account of his standing.

By 1874 the inconsistency of prescribing corporal punishment for indecent assault and attempted carnal knowledge, and not having it for the completed offence, became apparent. In an amendment Act of that year, it was extended to carnal knowledge of young girls, to rape, and to attempts to commit rape. In this way, corporal punishment for sexual offences was introduced into New Zealand law.

Flogging with a cat-o'-nine-tails for persons over 16 years of age was first embodied in the Criminal Code Act 1893. The provisions in that code (which originated with Sir James Stephen and other eminent English judges) so far as they related to corporal punishment, were re-enacted unchanged in the Crimes Act 1908. Under it adults could be flogged for eight sexual offences, namely:

- (1) Buggery and assault on a male person, s. 153.
- (2) An attempt to commit buggery, s. 154.
- (3) Rape, s. 212.
- (4) Attempted rape, s. 213.

- (5) Indecent assault on a female, s. 208.
- (6) Carnal knowledge of a girl under 12 years, s. 214.
- (7) Attempted carnal knowledge of a girl under 12 years, s. 215.
- (8) Carnal knowledge of an idiot or imbecile, s. 217.

Flogging could also be imposed for three other crimes:

- (1) Disabling in order to commit a crime, s. 195.
- (2) Aggravated robbery, s. 264.
- (3) Assault with intent to rob, s. 267.

The penalties of whipping and flogging were defined in the Criminal Code Act 1893, and re-enacted in s. 27 of the Crimes Act 1908:

"(1) Flogging is the infliction on a person of a number of strokes, not exceeding at any one time fifty, with a cat-o'-nine-tails of the description prescribed by the Minister of Justice.

"(2) Whipping is the infliction on a person of a number of strokes, not exceeding at any one time twenty-five, with a rod of the description prescribed by the Minister of Justice.

"(3) In each case the Court shall in its sentence specify the number of strokes to be inflicted.

"(4) Neither flogging nor whipping shall be inflicted on any woman or girl.

"(5) Flogging shall not be inflicted on a person whose age does not exceed sixteen years.

"(6) Whipping shall not be inflicted on a person whose age exceeds sixteen years.

"(7) No flogging or whipping shall take place after the expiration of six months from the passing of the sentence.

"(8) Where flogging is inflicted, the surgeon or medical officer of the prison in which the offender is confined shall be present when the punishment is inflicted; and, if he is of the opinion that the offender is not at any time able to bear the whole or any part of the punishment awarded, he may from time to time order the infliction of the whole or any part of the said punishment to be postponed."

Although flogging was available for a fairly wide range of offences, only 17 men were flogged between 1919 and 1935, when the last flogging took place. These men received from 10 to 15 strokes of the cat. Fourteen of them had committed sexual offences, 11 of them with a child. Five of the offenders were under 20 years of age, eight under 40 years of age, three under 50, and one was aged 51.

WHIPPING OF JUVENILES IN NEW ZEALAND

In New Zealand, the Offences Against the Person Act 1867 prescribed whipping for boys under 16 who injured people with explosives or abducted children. Boys under 16 could be whipped for all the offences in the Crimes Act 1908 for which adults could be flogged. They could also be whipped for a number of additional offences, mainly wounding with intent, endangering persons on railways or tramways,

abducting a girl under 16, extortion by certain threats, threatening by night, and all forms of arson and malicious damage. A general power to whip boys appears in the Justices of the Peace Act 1908. In practice during the last 16 years before 1936, although whipping could be imposed for 20 different offences, it was used appreciably only with regard to theft, breaking and entering, and wilful damage. In 1936 whipping was to all intents and purposes abolished for boys. Section 17 of the Statutes Amendment Act 1936 provided:

"17. Notwithstanding anything to the contrary in the Justices of the Peace Act 1927, or in any other Act, the punishment of whipping shall not be inflicted on any child or young person by order of a Children's Court established under the Child Welfare Act 1925."

As boys under 16 were brought before the Children's Court for all but the most serious crimes and could not be tried in Magistrates' Courts, judicial whipping came to an end.

As in Britain, those with the best opportunities for knowing differed as to the value of corporal punishment. Some of the magistrates believed in whipping for boys and so did some child welfare officers. Others did not.

In 1927 a magistrate wrote:

"I believe in the power to order a birching without any conviction being recorded. The difficulty is to find someone to do the birching—most constables refuse to do it. The Magistrate can be trusted to order it only when it is likely to do good."

In the same year another magistrate expressed a different view:

"Generally speaking, I am not in favour of this form of punishment and consider it is out of harmony with our methods of dealing with juveniles."

Flogging was finally abolished in New Zealand in 1941 when the enactment of a Crimes Amendment Act abolished corporal punishment as a judicial punishment altogether.

We have thus briefly reviewed the changes in legislation that resulted in the introduction and subsequent abolition of corporal punishment for various offences in the United Kingdom, and in New Zealand. It is pertinent to consider the reasons for the change.

The Cadogan Report sums up the arguments for abolishing corporal punishment as a penalty for adults thus:

"37. Corporal punishment is merely punitive; and it is out of accord with those modern ideas which stress the need for using such methods of penal treatment as give an opportunity for subjecting the offender to reformatory influences . . .⁸"

⁸Pp. 57-58, Cadogan Report.

The most cogent reason for abolishing corporal punishment, also from the Cadogan Report, is as follows:

"After examining all the available evidence, we have been unable to find any body of facts or figures showing that the introduction of a power of flogging has produced a decrease in the number of the offences for which it may be imposed, or that offences for which flogging may be ordered have tended to increase when little use was made of the power to order flogging, or to decrease when the power was exercised more frequently. We are not satisfied that corporal punishment has that exceptionally effective influence as a deterrent which is usually claimed for it by those who advocate its use as a penalty for adult offenders."⁹

In addition, it said:

"In view of modern developments in the treatment of offenders, special justification must be shown for the retention of a penalty which is purely punitive and contains no element of reform.¹⁰ . . . Not only does the corporal punishment itself contain no reformative element, but it may also run counter to the reformative influences which the sentence of detention is designed to bring to bear on the offender.¹¹ . . . In its own interests, society should, in our view, be slow to authorise a form of punishment which may degrade the brutal man still further and may deprive the less hardened man of the last remaining traces of self-respect. As applied to adults, corporal punishment is certainly more degrading than any of the other punishments recognised by our criminal law. This is not a conclusive argument against its retention, but it is a reason for considering very carefully whether it is essential on other grounds to retain a form of punishment which involves this risk that the person punished may thereby be rendered less useful, perhaps even more dangerous, to the community."¹²

The Cadogan Report also considered the influences of corporal punishment as a penalty for young offenders, and it mentions some of the dangers of whipping:

"A brief medical examination will normally suffice to decide whether a boy is physically fit for birching; but to assess a boy's psychological and temperamental capacity is a more difficult matter. Medical witnesses have stated that the medical examination normally carried out in these cases by an ordinary general practitioner has not always sufficed to prevent a boy suffering from certifiable mental defect from being birched, and there are clearly many degrees of psychological or temperamental unsuitability, far short of actual mental defect, which should preclude this form of punishment."¹³

⁹P. 90, Cadogan Report.

¹⁰P. 58, Cadogan Report.

¹¹P. 58, Cadogan Report.

¹²P. 59, Cadogan Report.

¹³P. 31, Cadogan Report.

This is one of the major arguments against corporal punishment of juveniles, and one of the features that distinguish judicial corporal punishment from that in schools and homes. When a young offender is birched by order of a Court the circumstances are very different from punishment in home or school. Few boys of about 12 years of age can be expected to recognise the retributive justification for birching as an expression of society's indignation at a breach of its laws, particularly if the birching is administered by a group of complete strangers several weeks after the offence. Some would argue that even in home or school there is no justification for the use of the birch.

Another practical objection to birching as a penalty for young offenders is the difficulty in finding someone to carry out the penalty. Submissions to both the Cadogan Committee and the Barry Committee¹⁴ made it plain that the Police were not prepared to carry out this task. And there are few if any prison officers today who would support the view that part of their function is the inflicting of punishment.

Finally, it can be argued that there would be contradiction in a law which denounced violent crime, but itself punished breaches of the law with violence. A prominent English writer contends¹⁵ that the paraphernalia of whipping—birch, cat-o'-nine-tails—are instruments of torture, and that torture does not cease to be such by calling it "severe pain inflicted judicially".

It is sometimes suggested that corporal punishment is an appropriate penalty for serious breaches of prison discipline, such as assaulting prison officers. The Cadogan Report, despite its emphasis on the degrading effect of corporal punishment not only on the person on whom it is inflicted, but on all who are involved in the process, recommended that for the time being at least corporal punishment be retained for such offences. The reason for this was that the deterrent effect of corporal punishment acted as a safeguard against serious assaults on prison officers, and that no other penalty which could be used against people who were already imprisoned had a similar deterrent effect. However, it was stressed:

"We consider that it should be held in reserve as the ultimate sanction by which to enforce prison discipline; but we think it should be used very sparingly and we hope that in the course of time, as the character of the prison population improves and there is less need for purely repressive measures, it will be found possible to dispense altogether with the use of this form of punishment."¹⁶

Section 65 of the Criminal Justice Act 1967 (U.K.) finally abolished corporal punishment in prison. It has already been noted¹⁷ that the

¹⁴Corporal Punishment, Report of the Advisory Council on the Treatment of Offenders. No. 1960 H.M.S.O.

¹⁵Rolph, C. H. *Common Sense About Crime and Punishment*, Gollancz, 1961. See also his description of flogging, pages 116–120, *ibid*.

¹⁶P. 114, Cadogan Report.

¹⁷*Supra*, p. 218.

Home Secretary had previously refused to ratify a sentence of flogging for an assault on a prison officer.

Because prisoners are held in captivity as punishment, violence (although it may not often manifest itself physically) is never entirely absent from the prison atmosphere. Prison officers may therefore feel the need for the protection afforded by the fear of physical punishment for physical violence. But there is no evidence to suggest that the abolition of flogging and whipping in New Zealand in 1941 caused any increase in assaults on prison staff.

Not only in the U.K. have there been commissions to examine the pros and cons of corporal punishment. During 1954 and 1955 a Joint Committee of the Senate and the House of Commons in Canada made an exhaustive study of the matter. Many members of the Committee started out with the view that corporal punishment should be retained for certain types of offences. By the time the Committee made its report, all had come to the view that corporal punishment had little value as a judicial punishment. A quotation from this report sums up findings that are very similar to those of the Cadogan and Barry Reports:

"The Committee kept two considerations in mind throughout its enquiry into corporal punishment as a part of the sentence of the Court. The first was whether it deters those subjected to it from further crime and, secondly, whether it deters the public generally to a greater extent than other methods of punishment. The evidence did not justify the view that it will exercise any special reformatory or deterrent influence on individuals upon whom it is administered and on the whole it appears to have the contrary effect. The Committee concluded that the existence of corporal punishment affords no unique deterrence to crime. Accordingly, the Committee recommends that corporal punishment be abolished for any of the offences for which it is presently prescribed in the Criminal Code."

STATISTICS FOR CORPORAL PUNISHMENT IN NEW ZEALAND

The following information is set out in four sections:

SECTION A refers to 17 offenders who were *flogged* during the period 1919-1935.

SECTION B refers to a sample group of 106 offenders who committed offences for which a possible punishment was flogging, *but who were not flogged*, during the period 1920-1933.

SECTION C refers to 83 boys who were *whipped* during the period 1920-1933.

SECTION D refers to a sample of 89 boys who committed offences for which a possible punishment was whipping, *but who were not whipped*, during the period 1920-1933.

A: OFFENDERS FLOGGED

From 1919 to 1935 seventeen persons were flogged in New Zealand for the following offences:

TABLE 1

Indecent assault on a female	..	..	4
Rape	..	..	5
Carnal knowledge	..	..	3
Indecent assault on a male	..	..	1
Buggery	..	..	1
Robbery with violence	..	..	2
Disabling in order to commit a crime	..	..	1
Total	..	..	17

TABLE 2

This table shows the full sentence imposed on those flogged:

Sentences Received

2 years hard labour and 12 strokes	..	1
3 years hard labour and 12 strokes	..	1
4 years hard labour and 12 strokes	..	1
4 years hard labour and 15 strokes	..	1
5 years hard labour and 10 strokes	..	2
5 years hard labour and 15 strokes	..	1
7 years hard labour and 10 strokes	..	4
7 years hard labour and 15 strokes	..	1
10 years hard labour and 10 strokes	..	2
10 years hard labour and 14 strokes	..	1
15 years hard labour and 10 strokes	..	1
Life imprisonment and 10 strokes	..	1
Total	..	17

Of these 17, five committed no further offences, one died while in prison, five left New Zealand and the remaining six committed further offences as shown in Table 3.

TABLE 3

Offence for Which Flogged	Further Offence(s)
Disabling in order to commit a crime	Stowaway, breaking, entering and theft, receiving, in possession of housebreaking instruments, in possession of a revolver, assault causing actual bodily harm, etc. (4 appearances)
Robbery with violence	Idle and disorderly, receiving, assault, disorderly behaviour and default of maintenance (3 appearances)
Robbery with violence	Robbery with violence
Carnal knowledge	Receiving, theft, false pretences, housebreaking (4 appearances)
Indecent assault on a female	Indecent assault on a female
Carnal knowledge	Intimidation and obscene language, forgery and uttering (2 appearances)

Of the three flogged for other than sexual crimes, all reoffended. Three of those punished for sex crimes reoffended, one repeating the crime for which he was flogged. Thus, of the remaining 12 offenders, five having left the country and one being dead, it is certain only that six did not reoffend. In any event, 35.3 percent reoffended.

B: OFFENDERS NOT FLOGGED

1. In order to establish the number of persons who committed offences for which flogging was a possible punishment the *Police Gazette* was searched for the years 1920–1932 inclusive. The names of 883 offenders were extracted in this manner. A random $12\frac{1}{2}$ percent sample was taken of these names and the records of this group of 106 offenders examined.

2. Results:

Of the 106 in the sample—

74 persons convicted in the period committed no further offences serious enough to warrant imprisonment, and did not have previous records (i.e., first offenders).

28 committed further offences.

4 had previous records but committed no further offences (two of these committed indecent assault, and two indecent assault on a male).

—26.4 percent reoffended.

TABLE 4

Offences Committed by the 74 Non-recidivists

Indecent assault	..	..	..	43
Indecent assault on a male	..	..	..	14
Rape	..	..	..	5
Buggery	..	..	..	4
Attempted indecent act on a male	..	..	..	1
Attempted carnal knowledge of imbecile	..	..	..	1
Robbery with violence	..	..	..	6
Total	..	..	..	74

TABLE 5

Sentences Received by the 74 Non-recidivists

Reformative Detention	1 year	..	..	4
	2 years	..	..	10
	3 years	..	..	6
	5 years	..	..	4
	7 years	..	..	1
Hard Labour	3 months	..	..	4
	9 months	..	..	2
	1 year	..	..	7
	18 months	..	..	2
	2 years	..	..	1
	2½ years	..	..	1
	3 years	..	..	6
	4 years	..	..	5
	5 years	..	..	7
	7 years	..	..	1
	10 years	..	..	2

Thus 32 of the 63 persons sent to prison received sentences of three years or more.

Borstal Training	2 years	..	..	2
Industrial School	..	..	..	1
Probation	1 year	..	..	2
	2 years	..	..	2
	3 years	..	..	2
	5 years	..	..	1
Come up if called	..	..	..	1
Total	..	..	..	74

TABLE 6

Ages of the 74 Non-recidivists

Age	No.	Age	No.	Age	No.
13 ..	1	29 ..	1	45 ..	3
15 ..	1	31 ..	1	49 ..	3
16 ..	1	33 ..	2	50 ..	2
18 ..	2	34 ..	2	51 ..	3
20 ..	5	35 ..	1	52 ..	1
21 ..	5	36 ..	1	54 ..	1
22 ..	3	37 ..	2	56 ..	1
23 ..	2	38 ..	2	57 ..	1
24 ..	1	39 ..	2	62 ..	1
25 ..	1	40 ..	1	69 ..	2
26 ..	2	41 ..	3	73 ..	1
27 ..	3	42 ..	3	76 ..	2
28 ..	4	43 ..	1	Total	<u>74</u>

TABLE 7

Original Offences Committed by the 28 Recidivists

Indecent assault ..	10
Indecent assault on a male ..	13
Rape ..	2
Buggery ..	1
Robbery with violence ..	2
Total ..	<u>28</u>

By inspection, it can be seen that those who committed indecent assaults on males made up 50 percent of the recidivists, while among the non-recidivists these offenders constituted 24.3 percent of the total.

TABLE 8

Sentences Received by the 28 Recidivists for the Original Offence

Reformatory Detention

2 years ..	1
3 years ..	2

Hard Labour

6 months ..	1
9 months ..	1
18 months ..	1
2 years ..	4
3 years ..	5
4 years ..	3
5 years ..	4
7 years ..	1
10 years ..	1

Sixteen of the 28 recidivists received sentences of three years or more in prison.

Borstal Training

2 years	..	1
5 years	..	1

Industrial School	1
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Probation

5 years	..	1
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Total	28
-------	----

TABLE 9

Ages of the 28 Recidivists

Age	No.	Age	No.
14 1	37 2
16 1	38 2
17 3	40 1
19 ..	.. 3	42 ..	.. 2
22 ..	.. 1	44 ..	.. 2
24 ..	.. 3	49 ..	.. 1
27 ..	.. 1	53 ..	.. 1
29 ..	.. 1	59 ..	.. 1
36 ..	.. 1	77 ..	.. 1
		Total	28

TABLE 10

Further Offences Committed by the 28 Recidivists

Original Offences		Further Offences	
Indecent assault on a male (13)	..	{ Indecent assault on a male	4
		{ Buggery	1
		{ Assault on a female	1
		{ Indecent assault	1
		{ Obscene exposure	1
		{ Theft	3
		{ Rogue and vagabond	1
		{ Breach of probation	1
Indecent assault (10)	..	{ Indecent assault	5
		{ Carnal knowledge	1
		{ Indecent language	1
		{ Theft	3

Original Offences				Further Offences	
Rape (2) ..	..	..	..	{ Rape	1
				{ Wounding with intent	1
Buggery (1)	..	..	..	Buggery	1
Robbery with violence (2)	..	..	..	{ Theft	1
				{ Rogue and vagabond	1
Total					28

It can be seen from the preceding table that 26 out of 28 recidivists originally committed sex offences. The following table (see also table 3) shows how many of these sex offenders committed further sex offences.

TABLE 11

Recidivism of Sexual Offenders

Of the 13 who committed indecent assault on a male	8	committed further sex offences.
Of the 10 who committed indecent assault..	6	committed further sex offences.
Of the 2 who committed rape ..	1	committed a further sex offence.
Of the 1 who committed buggery ..	1	committed a further sex offence.

Thus 16 of the 26 sex offender recidivists committed further sex crimes.

C: BOYS WHIPPED

From the *Police Gazette* the names of 83 boys who were whipped between the years 1920 and 1933 were extracted. This figure of 83 does not include all the boys who were whipped during that period, but only those who were convicted in Magistrates' Courts. It is not known how many boys were dealt with in Children's Courts.

The boys received from four to 12 strokes of the birch. It is known that in some cases the full punishment was not carried out. Whippings were administered by the Police, child welfare officers, and sometimes by the parent to the satisfaction of the Police. The instrument was sometimes a leather strap, a webbing belt "with edges removed", a piece of dowelling, a cane, or "a piece of wood".

Of the 83 boys whipped, 15 committed further offences for which they received terms of imprisonment or borstal training. Sixty-eight boys did not reoffend in a manner serious enough to warrant any form of institutional treatment.

TABLE 12

Offences of 15 Recidivists

Theft	..	..	13
Indecent assault	..	..	1
Arson	..	..	1
Total	..	..	<u>15</u>

TABLE 13

Age of 15 Recidivists

Age	No.
10	2
11	1
12	2
13	4
14	1
15	2
16	3
Total	<u>15</u>

TABLE 14

Further Offences

Original Offence				Further Offences	
Theft (13)	..	..	..	Theft	11
				Receiving	1
				Aggravated assault	1
Indecent assault	..	..	..	Indecent assault	1
Arson	..	..	..	Theft	1

TABLE 15

Offences of 68 Non-recidivists

Theft	..	..	..	..	48
Receiving	..	..	..	..	2
False pretences	..	..	..	..	1
Mischief	..	..	..	..	4
Wilful damage	..	..	..	..	2
Obstructing railway	..	..	..	..	3
Indecent assault	..	..	..	..	5
Absconding from Industrial School	..	..	..	..	2
Absconding from Children's Home	..	..	..	..	1
Total	..	..	..	..	<u>68</u>

TABLE 16

Ages of 68 Non-recidivists

Age	No.
8 ..	1
9 ..	1
10 ..	4
11 ..	7
12 ..	9
13 ..	13
14 ..	15
15 ..	15
16 ..	3
Total	68

D. BOYS NOT WHIPPED

A sample of 178 boys who committed offences for which a possible punishment was whipping was extracted from the *Police Gazette* for the years 1920-1933. This sample consists, in general, of boys who committed mischief, arson, and wilful damage. The omission of cases of theft may give a bias to the figures. However, as a rough control group for the purpose of comparing these boys with the boys who were whipped, the following tables may be of some value. A random 50 per cent sample was taken of the 178 boys to give a roughly comparable group of 89.

Of the 89 boys who committed offences for which a possible punishment was whipping and who were not whipped, 10 committed further offences serious enough to warrant imprisonment, and 79 committed no further serious offences.

TABLE 17

Offences of 10 Recidivists

Mischief ..	5
Arson ..	4
Theft ..	1
Total	10

TABLE 18¹⁸*Sentences of 10 Recidivists*

To come up if called	1
Admonished	2
To make restitution	2
Committed to Child Welfare ..	1
To Industrial School	1
3 years Borstal Detention ..	1
2 years Reformatory Detention ..	2
Total	10

TABLE 19

Further Offences of 10 Recidivists

Original Offence	Further Offence(s)
Mischief (5)	{ Theft 4 Carnal knowledge 1
Arson (4)	{ Arson 2 Theft 2
Theft (1) .. ..	.. Car conversion 1

TABLE 20

Offences of 79 Non-recidivists

Wilful damage	6
Arson	12
Mischief	56
Theft	5
Total	79

¹⁸The Prevention of Crime Act 1924 abolished industrial schools, and established the sentence of borstal detention. The latter name was changed to borstal training in 1954.

TABLE 21

Sentences of 79 Non-recidivists

To come up if called	2
Convicted and discharged	2
Admonished	16
To make restitution	24
Fined	12
1 year Child Welfare supervision	4
2 years Child Welfare supervision	4
Children's Home	4
Industrial School	2
1 year Probation	1
1½ years Probation	1
3 years Probation	3
2 years Borstal	2
5 years Borstal	1
7 years Reformative Detention	1
	—
Total	79
	—

CONCLUSIONS

(a) *Flogging*—Of those who were flogged and whose subsequent records we know, 55 percent reoffended. Of those who committed crimes for which a possible punishment was flogging, but in fact were not flogged, 26.4 percent reoffended. Apparently 11 of the 14 sex offenders flogged did not reoffend. (It should be remembered that five sex offenders who were flogged left the country, and one died in prison—of those who left we do not know whether or not there were subsequent convictions.)

Of those not flogged, 72 out of 98 sex offenders did not reoffend. Expressed as percentages, 21.5 percent of the flogged sex offenders reoffended, and 26.5 percent of the sex offenders who were not flogged did offend again. The number of persons flogged is, of course, too small to be able to draw any reliable statistical conclusion. But the inference is plainly that flogging did not have any markedly different effect from other forms of treatment.

(b) *Whipping*—Again it is difficult to draw any significant conclusions from the available data. As previously mentioned, the information on those not whipped is not strictly comparable with the information on those whipped. With this reservation, 15 of the 83 boys whipped committed further offences, whilst 10 of the 89 not whipped committed further offences. The evidence tends to suggest, if anything, that in a majority of cases, there is no support for the assumption that whipping is a more effective deterrent than other forms of punishment.

Chapter 7

FEMALE OFFENDING

Female offending in New Zealand is a broad subject, and involves a very heterogeneous group. To give anything like a full account of it would be to trespass on much of the territory of other chapters of this book. The object of this chapter is not to gather together what is said elsewhere in this book that happens to be applicable to women. Our concern is to discuss the amount and kinds of offending by women, to analyse the sentences imposed on women, and to say something of problems faced by women and girls who have been convicted of breaches of the law. The chapter concludes with some very tentative observations on the causes of crime committed by women.

It is perhaps worth pointing out that a good deal of what may be regarded as "anti-social" activity on the part of women and girls lies within the borderland between morality and crime. The comment has sometimes been made that the true counterpart of the male offender is not the female offender so much as the prostitute. Just how valid this approach is, it is hard to say. It is certain however that such phenomena as promiscuity and fecklessness are relevant to a study of the female offender. The traits and environment that may lead a boy into crime may lead his sister into promiscuity, fecklessness, or prostitution, which may or may not involve her in conflict with the law. Male criminals have their female associates, who may themselves commit crimes, detected or undetected, but whose general standards in any event are similar to those of the men. Nor should it be forgotten that the law which is invoked against females, and particularly adolescent girls, is in many cases an attempt to regulate sexual behaviour by legal sanctions.

INCIDENCE OF FEMALE OFFENDING

Whatever figures are chosen as an index of crime, females make up a very small proportion of all offenders. This is illustrated by the Magistrates' Courts convictions in 1964:

Total number of convictions	..	..	142,855
Convictions of females	..	..	11,045
Convictions of females as percentage of total convictions	..	..	7.7%

(These figures include all traffic offences.)

Similarly, of offences which appear to the courts serious enough to call for the offender's detention, very few are committed by women, although the number of females sentenced to borstal is comparatively very much higher than the number sentenced to imprisonment. The following analysis of the inmate population on 31/12/63 shows this clearly.

Proportion of female prisoners to all prisoners ..	2.8%
Proportion of female borstal trainees to all borstal trainees	14.2%

It is difficult, if not impossible, to estimate how many offences are committed but remain unreported or undetected. This is true of both male and female offending. It may be, however, that female offenders are less likely to be reported to the police and prosecuted than males, whether by reason of their sex or by the nature of the offence. One offence that in the past was often not reported is shoplifting, and since women in New Zealand do most of the shopping, this could well be a predominantly female activity. Sometimes, by choosing her victims carefully, an unscrupulous woman may be able to avoid being charged with theft as a servant, or with false pretences, because the man concerned would feel too foolish to admit he had been deceived by a woman. He might have much less compunction in charging a male employee caught at the same activity.

Nevertheless, although females probably enjoy considerably more protection from their families, their employers, and the community at large than do males, there is no indication that this goes anywhere near to accounting for the large differences between male and female crime rates.

Whether females are by nature more law-abiding than males is pure speculation. It may be that they have less opportunity for illegal activity. A possible explanation can be suggested in terms of what society expects of each sex, the different training given to boys and girls and their different roles and status in society.

The little girl is encouraged to be loving and tender to her dolls while the little boy is taught to be tough and manly. The boy is told that his life prospects depend on his success in training for a job, while the girl is besieged from all sides with the ideal of "being attractive" and the desirability of making a good marriage. During their more mature years the man is carving out his career, while his wife supports and helps him in the background and looks after his home and children. Throughout this time the pressure of society on the male to be aggressive and active, and on the female to be gentle and passive, is powerful and insistent. Of course there are exceptions, and such generalisations cannot be taken too far, but, by and large, they may be relevant to differences between male and female rates of offending.

It remains to be seen whether the increasing direct economic role of the female in the community, with most women having jobs outside

the home for a considerable part of their lives, will have an effect on the ratio between male and female offending.

Table 1 shows changes in the rates of offending by females in the period 1937 to 1965. The figures used for this analysis are those of total charges preferred against females in the Magistrates' Courts, and they were chosen because they are the only ones available over the whole period. They include cases in which the person charged was not convicted, and each charge is counted separately, so that 10 charges against one woman at one time are recorded as 10 cases. They also include charges laid in respect of offences which are not usually regarded as serious—minor breaches of various regulations and particularly minor traffic offences.

TABLE 1

Changes in Female Crime Rates 1937-65¹

Year	Total Charges (to Nearest 100)	Female ² Population	Total Charges per 100,000 Females
1937	2,800	782,716	358
1938	3,000	791,022	379
1939	3,000	801,687	374
1940	2,600	814,490	319
1941	2,500	826,267	303
1942	3,300	837,837	394
1943	2,900	846,685	343
1944	3,200	856,778	373
1945	2,900	867,752	334
1946	2,700	880,973	306
1947	2,400	898,493	267
1948	2,800	915,966	306
1949	2,900	933,213	311
1950	2,900	950,807	305
1951	3,000	969,653	309
1952	3,700	992,786	373
1953	4,600	1,018,657	452
1954	3,800	1,041,501	365
1955	4,300	1,062,943	405
1956	5,300	1,085,108	488
1957	5,700	1,109,975	514
1958	6,800	1,136,019	599
1959	6,600	1,160,511	569
1960	7,700	1,182,307	651
1961	8,900	1,207,071	737
1962	9,900	1,236,741	800
1963	11,000	1,265,348	869
1964	14,000	1,292,904	1,083
1965	14,500	1,317,461	1,101

¹New Zealand Justice Statistics.

²Mean population (inclusive of Maoris) for the year ended 31 December. Females. Report on the Population, Migration and Building Statistics of New Zealand.

It can be seen that during the years 1937 to 1954 there were minor fluctuations, but by and large rates of female offending remained fairly constant and very low. There was a small peak during the war years (when many young men were overseas) followed by a drop after the war. During this time the rate never rose above nine charges for every 2,000 women in the community.

From 1954 onwards the rate rose steadily and steeply. In 1965 there were nearly 22 charges per 2,000 women—more than twice the maximum rate over the period 1937 to 1954.

More detailed information is available from 1956 onwards when the method of presenting Justice statistics was altered. From this time it has been possible to know how many persons were convicted, with the reservation that if one person is convicted on five separate occasions during the year, he or she is still counted five times.

TABLE 2

Distinct Cases and Summary Convictions of Females 1956-65³

Magistrates' Courts only.

Year	Total Distinct Cases	Total Summary Convictions	Distinct Cases per 100,000 Population	Convictions per 100,000 Population
1956	4,456	4,081	411	376
1957	4,797	4,235	432	382
1958	5,701	5,267	502	464
1959	5,621	5,087	484	438
1960	6,775	6,251	573	529
1961	7,704	7,024	638	582
1962	8,589	7,927	694	641
1963	9,181	8,479	726	670
1964	11,879	11,045	919	854
1965	12,879	12,022	978	913

It is evident from these figures that tables showing distinct cases and summary convictions follow very much the same trend as those for total charges. Thus it is reasonable to assume that a similar relationship was present in the years when we did not have figures for distinct cases.

During the years since 1950 motor traffic has multiplied, and cities have become increasingly congested and difficult for drivers. Table 3 examines the extent to which traffic convictions account for the increasing number of females convicted in the Magistrates' Courts.

The relationships between the figures given in tables 1, 2, and 3 can be seen more readily in the following graph:

³New Zealand Justice Statistics.

GRAPH OF TABLES 1, 2 & 3 TOTAL CHARGES AGAINST FEMALES
MAGISTRATES COURTS 1937 - 1964

RATE PER 100,000 MEAN POPULATION

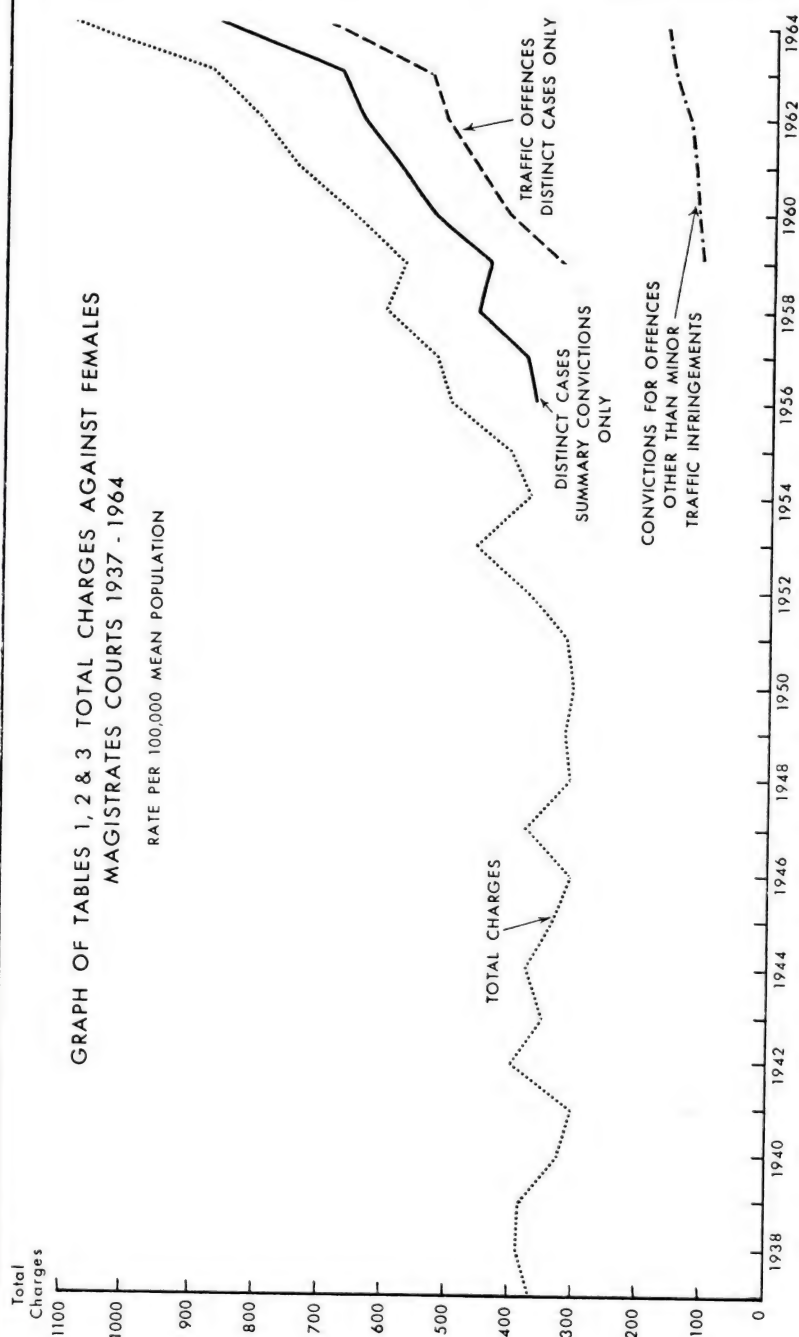


TABLE 3

Convictions for Minor Traffic Offences in Relation to Total Convictions of Females 1959-64⁴

Year	Convictions for Minor Traffic Offences	Convictions for Offences Other Than Minor Traffic	Traffic Offences/100,000 Population	Offences Other Than Minor Traffic/100,000 Population
1959	3,787	1,300	326	112
1960	4,830	1,421	409	120
1961	5,516	1,508	457	125
1962	6,267	1,660	507	134
1963	6,607	1,872	522	148
1964	8,885	2,160	687	167

It will be seen that even when traffic offences are taken out of the figures, and corrections are made for the changing numbers in the population, there has been a slow but steady increase in the rate of female offending.

RANGE OF OFFENDING

Typical female offending covers a somewhat narrower range than does male offending. Some indication of this range is given by the figures for 1963; the general pattern does not change markedly from year to year.

TABLE 4

Total Convictions of Females 1963

Distinct Cases Only

	Offence					Number of Convictions
<i>Supreme Courts</i>						
Manslaughter	2
Drunk in charge causing injury	1
Common assault	1
Abduction	1
Abortion	3
Robbery and stealing from the person	2
Theft	2
Receiving	1
Perjury	3
Selling liquor without licence	1
Total	17

⁴New Zealand Justice Statistics.

	Offence	Number of Convictions
<i>Magistrates' Courts</i>		
Negligent driving causing death	3
Negligent driving causing injury	4
Failing to stop after accident	2
Aggravated assault	2
Common assault	31
Incest	2
Conspiracy to induce sexual intercourse	1
Abduction	2
Concealment of birth	3
Cruelty to children	9
Bigamy	4
Total offences against the person		63
Robbery and stealing from the person	2
Burglary, breaking and entering and attempts	36
Embezzlement	47
Theft (other, undefined and attempts)	432
Receiving	22
Fraud and false pretences	55
Arson and attempts	1
Conversion (car, bicycle, and other)	15
Wilful damage, trespass, etc.	17
Total offences against property		627
Forgery	4
Drunkenness (all types)	251
Indecent, riotous, or offensive conduct	52
Obscene language	44
Assault, resist or obstruct Police	5
Vagrancy	161
All other offences against good order	42
Excessive speed in motor vehicle	1,618
Negligent driving	1,080
Breach parking regulations	2,896
Offences related to driver's licence	180
No warrant of fitness	538
Other minor traffic offences	267
Total offences against good order		7,134

Offence					Number of Convictions
Breach of probation	..	..	..	..	29
Offences against licensing laws	..	..	..	..	261
Income tax, no returns or false returns	..	..	..	..	114
Operating radio without licence	..	..	..	..	33
Escaping	..	..	..	..	2
Breaches of maintenance order	..	..	..	..	5
Prohibited immigrant	..	..	..	..	1
Stowaway	..	..	..	..	3
All other	..	..	..	..	203
Total other offences					651

The reader must bear a number of things in mind in interpreting these figures:

The actual charge on which the offender is taken to Court is first of all a matter of judgment on the part of the police. The charge may differ from the original offence for which the person was arrested. After an arrest has been made, perhaps for drunkenness, vagrancy, or offensive conduct, police investigations may reveal other more serious charges that can be laid.

A person may also be convicted on a number of different charges. In "distinct cases only" this will appear as one conviction only and that for the offence judged by the Statistics Department to be the most serious.

Very similar cases may appear in Justice Statistics under a number of different headings. For example, one study of 17 cases involving cruelty to children which came to the notice of the Auckland District Probation Office between 1949 and 1965 showed convictions on the following charges:

Murder	..	..	..	..	..	1
Manslaughter	..	..	..	..	..	5
Assault causing bodily harm	..	..	..	..	..	2
Assault on child	..	..	..	..	..	1
Assault	..	..	..	..	..	2
Wilfully ill-treating child	..	..	..	..	..	2
Wilfully neglecting	..	..	..	..	..	1
Ill-treating, neglect, and exposing	..	..	..	..	..	1
Exposing	..	..	..	..	..	1
Failing to provide necessities of life	..	..	..	..	..	1

In Justice Statistics this sample would appear as follows:

Murder	1
Manslaughter	5
Aggravated assault	3
Common assault	2
Cruelty to children	6

A single heading in Justice Statistics includes cases that may be very different. For example, the offences of the public accountant who misappropriated £48,970 of his clients' funds and of the shop assistant who took a few pounds from the till would both be listed under "embezzlement". Nor can the sentence imposed be used as a measure of the seriousness of the offence committed because of individual differences in sentencing and because the sentence may depend as much on the offender's background and previous record as on the facts of the offence alone.

The convictions set out in table 4 can be grouped as follows:

Offences against the person	71
Offences against property	631
Offences against good order:	
Traffic	6,579
Non-traffic	555
Other offences	655

So far, nothing has been said about cases dealt with in the Children's Courts, before which an appreciable proportion of female offenders come. Thus in 1963, 1,900 females were convicted in the Magistrate's Courts of offences other than minor traffic offences. In the same year 493 girls were dealt with by the Children's Courts for various offences; in addition 554 girls came before these courts as indigent or delinquent children.

The following tables and graphs analyse the cases involving females which were dealt with by Children's Courts in 1963 according to the nature of the case and the age of the girl.

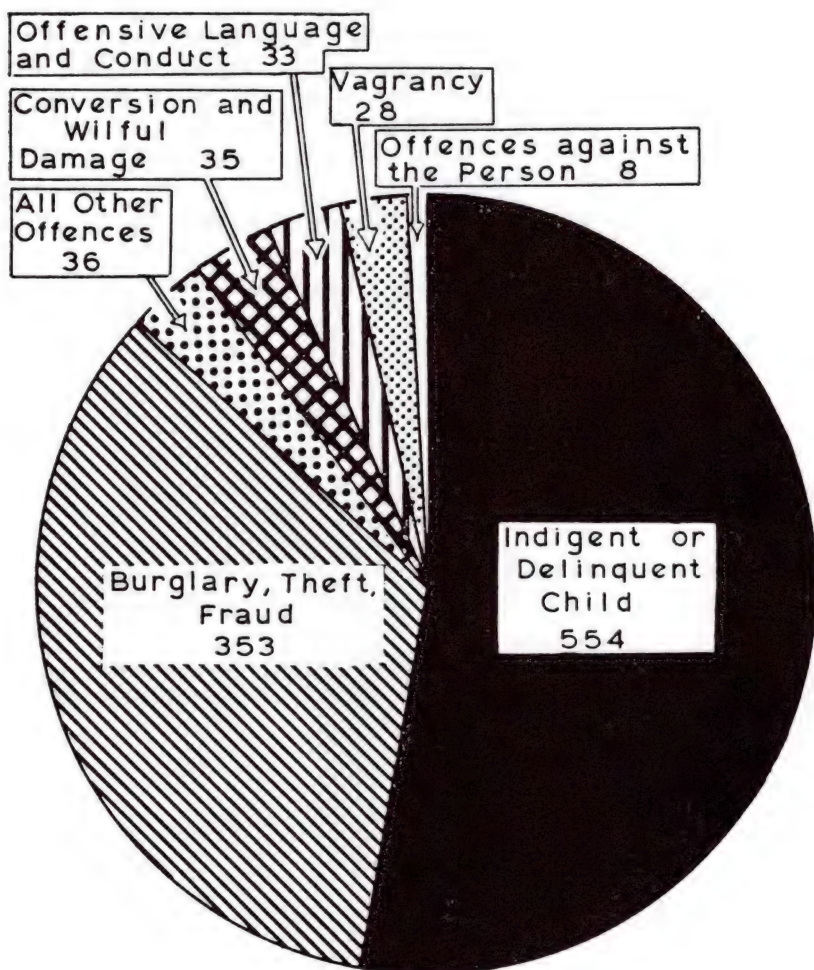
TABLE 5

Children's Courts, Distinct Cases 1963, Females

Offences against the person	8
Burglary, theft, fraud	353
Conversion and wilful damage	35
Offensive language and conduct	33
Vagrancy	28
All other offences	36
Indigent or delinquent child	554
	<hr/> 1,047 <hr/>

CHILDREN'S COURTS - NUMBER OF
DISTINCT CASES, 1963

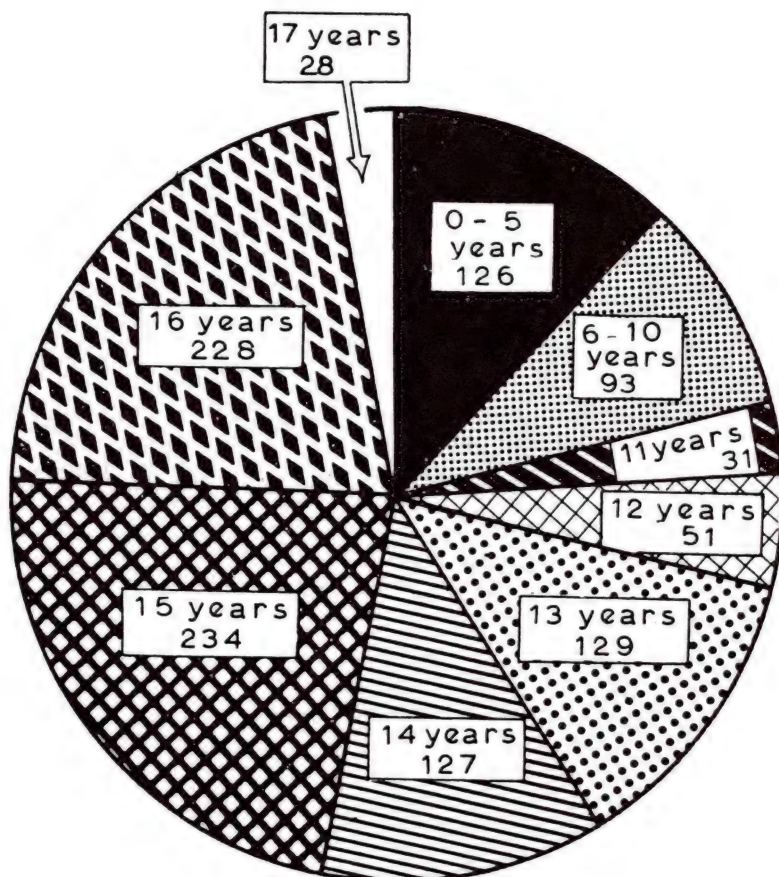
- Females -



Total Distinct Cases 1,047

CHILDREN'S COURTS - NUMBER
OF DISTINCT CASES BY AGES
1963

- Females



Total Distinct Cases 1,047

TABLE 6
Ages of Distinct Cases in the Children's Court
Females, 1963

Age	Number
0- 5	126
6-10	93
11	31
12	51
13	129
14	127
15	234
16	228
17	27
18	1
	<hr/> 1,047 <hr/>

A high proportion of the offences (other than traffic offences) committed by women are theft and vagrancy, and these two crimes are responsible for much of the increase in female offending rates during the past 12 years.

A general discussion of theft is to be found in the chapter on dishonesty, and that chapter contains a study of shoplifting, which as we have said may well be predominantly a woman's crime. On the other hand female vagrancy presents many facets which distinguish it from male vagrancy, and it may be interesting to examine one aspect of female vagrancy to a greater depth.

ASPECTS OF VAGRANCY

The heading "Other Vagrancy"⁵ in Justice Statistics includes a number of cases resulting from the arrest of girls in or near ships. The sections of the Police Offences Act 1927 empowering the Police to make such arrests are discussed in some detail in the chapter on petty offending.⁶ As a general rule, when ships are in port men and officers of most shipping lines are entitled to have visitors on board until 11 p.m. Wharf police exercise a certain discretion in approaching visitors before that

⁵Information relating to vagrancy is taken from the entries in Justice Statistics for "soliciting prostitution", "keeping a brothel or disorderly house", "begging", and "other vagrancy".

Offences included under the heading "other vagrancy" are: Consorting with disreputable or disorderly persons. Consorting with thieves. Found unlawfully on premises by night. Idle and disorderly. Illegally on enclosed premises. Incurable rogue. Insufficient means of support. No means of support. No visible means of support. Loitering. Female unlawfully on ship. Rogue and vagabond. A fuller description of these offences may be found in the chapter on "petty offending".

⁶Pp. 353 *et seq.*

time. However, they may question a girl of unkempt appearance as to her means of support, and if she cannot prove to their satisfaction that she has sufficient lawful means, she is liable to be charged with being "idle and disorderly".⁷ Similarly, further arrests may be made when police check ships to make sure that all girls on board have passes, or when they are called on board to quell a disturbance, or when a search is being made for someone who is missing.

To the girl involved, being arrested seems a matter of bad luck, and is rarely accompanied by a sense of shame or wrong-doing. Many girls argue that they are free to attend parties anywhere else, and cannot understand why the fact that they are in a ship should make so much difference. They are equally unable to understand why a party in a ship should have to end at 11 p.m. when a party elsewhere can continue later.

At least one reason why police are required to do what they can to regulate behaviour in a ship while it is in port is public concern at the spread of venereal disease. Control of the disease requires that promiscuous girls be found and treated. In New Zealand venereal disease seemed to be coming under control for a time, and in 1956 the incidence of new cases of gonorrhea was lower than ever before. It has since been increasing.⁸ Legal provision for the control of venereal disease comes from the Venereal Diseases Regulations 1964,⁹ under which any person suspected by a medical officer of health to be suffering from venereal disease is required to submit to examination and treatment. In addition, police officers can use the Police Offences Act 1927 to arrest those whom they suspect of leading idle and promiscuous lives and who may have a venereal disease.

Venereal disease is not notifiable in New Zealand. Control depends on finding cases and in tracing contacts. The greatest single risk in spreading the disease is the undiagnosed female who may be quite unaware of infection.

The "ship girls" are an obvious source of infection. The most careless and irresponsible of them attract most police attention, and are likely to be charged under the Police Offences Act. When one of these girls appears in Court, the probation officer's report may mention that she has not been attending a venereal diseases clinic for treatment. Such a report may contribute to a Magistrate's decision to send her to an institution, where she is certain to obtain the medical care she needs.

Most of the "ship girls" in New Zealand are not prostitutes. They are more often girls who find it difficult to establish an ordinary boy-girl relationship—the lonely girls, the plain girls, girls who feel that they are not welcome at home, girls new to a city, girls in monotonous

⁷Police Offences Act 1927, s. 50.

⁸Platts, "The Problem of V.D. and Young People". *N.Z. Medical Journal*, Supplement 64. 14.

⁹Made under the authority of the Health Act 1956.

undemanding jobs. To these, the warm, unquestioning acceptance and gaiety offered on board a ship offer many attractions. Much of the recidivism among female offenders results from following ships.

Far from making a living from ship following, many girls are often almost destitute. The more sophisticated and socially competent have regular jobs, know about getting passes to go on board, and remember to go ashore by 11 p.m. The number in this group is unknown and few of them ever appear in Court. But the less sophisticated girls tend to live for the moment, to spend what little money they have on beer for a party, to stay with their boy friends until the ship sails—and then find themselves without money, work, or accommodation, perhaps in a strange city. In such circumstances, the temptation to “borrow” clothes or money is a very real one.

When these girls are finally sentenced to, say, borstal training they are shocked and rebellious. It takes a good deal to convince them that they have done anything wrong.

TABLE 7

Trends in Convictions for “Other Vagrancy”¹⁰ (Females)

Year	Total Charges	Distinct Cases Summary Convictions Only	Distinct Cases Imprisoned	Distinct Cases Convictions/100,000 Population	Distinct Cases Imprisoned/100,000 Population
1948	45				
1950	49				
1952	62				
1954	73				
1956	*	102	23	9.4	2.1
1958	90	66	17	5.8	1.5
1960	113	89	16	7.5	1.4
1962	192	147	53	11.9	4.3
1963	212	161	64	12.7	5.1
1964	214	171	61	13.2	4.7
1965	238	173	57	13.1	4.3

*Figure not available.

SENTENCING OF FEMALE OFFENDERS

In 1964, 154,464 cases were heard in Magistrates' Courts in New Zealand. In 7.69 percent of these cases the defendants were females. The following table summarises the results of the hearings:

¹⁰New Zealand Justice Statistics.

TABLE 8

Magistrates' Courts, New Zealand 1964

Distinct Cases	M	F	Percent of Cases	
			M	F
Dismissed	9,385	601	6.58	5.10
Sent to Supreme Court	369	28	0.26	0.24
Discharged, section 42 ..	1,021	205	0.72	1.73
Convicted	131,810	11,045	92.44	92.98
Total	142,585	11,879	100.00	100.00

It is evident that although females made up only 7.69 percent of the total distinct cases, once a female comes before the Courts her chance of being convicted is little, if at all, different from that of a male. A slightly higher proportion of males had their cases dismissed, and slightly more females proportionately were discharged under section 42 of the Criminal Justice Act 1954.

PENALTIES

The most frequently used penalty was the fine. This is partly a reflection of the fact that a large proportion of the cases were concerned with minor traffic offences and another considerable group with breaches of various bylaws and regulations.

TABLE 9

Percentage of Total Cases Dealt With by Fine Only—Magistrates' Courts 1964¹¹

Males		Females	
Number of Cases Fined	Percentage of Total Male Cases	No. of Cases Fined	Percentage of Total Female Cases
121,261	85.04	10,087	84.91

The proportion of cases dealt with by fine is almost the same for males and females. This does not hold good for other sentences, as the following detailed table shows. It covers all cases dealt with otherwise than by fine except where suspended committal orders were made upon conviction for default under a maintenance order. In 1964, 1,469 suspended imprisonment orders were made, all but seven against males. These orders are excluded because they are a sanction unique to this offence, which is moreover one that is committed almost solely by males. It was felt that to include them might distort the patterns for other offences. There is the additional fact that maintenance default, though often linked with the commission of other offences, is largely *sui generis*.

¹¹Justice Statistics 1964.

TABLE 10

Persons Convicted in 1964 and Dealt With by Other Means than Fine¹²

	Male	Percent of These Cases	Female	Percent of These Cases
Convicted and ordered to come up for sentence	450	4.94	125	13.13
Order made ¹³	1,726	18.98	66	6.93
Convicted and discharged or ordered to pay costs ..	2,357	25.94	277	29.13
	<hr/> 4,333	<hr/> 49.86	<hr/> 468	<hr/> 49.19
Probation	820	9.01	252	26.50
Probation and fine	507	5.58	38	4.01
Probation and pay costs ..	15	0.17	4	0.41
	<hr/> 1,342	<hr/> 14.76	<hr/> 294	<hr/> 30.92
Total probation				
Borstal training	337	3.72	42	4.42
Detention centre	221	2.42	..	..
Detention centre and fine ..	2	0.03	..	..
	<hr/> 560	<hr/> 6.19	<hr/> 42	<hr/> 4.42
Corrective training	1	0.02	..	..
Imprisonment	2,489	27.38	135	14.21
Imprisonment and fine	4	0.03	..	..
Imprisonment and probation	158	1.74	12	1.26
	<hr/> 2,652	<hr/> 29.19	<hr/> 147	<hr/> 15.47
Total imprisonment				
Grand total	<hr/> 9,087	<hr/> 100.00	<hr/> 951	<hr/> 100.00
Total sentenced to institutional training	<hr/> 3,212	<hr/> 35.35	<hr/> 189	<hr/> 19.89

These percentages are interesting and suggest a field for more detailed research. A much higher proportion of females were convicted and ordered to come up for sentence if called upon; a much higher proportion were released on probation. About half as many proportionately were sentenced to imprisonment. On the other hand relatively more females than males (4.42 percent to 3.72 percent) were sentenced to borstal training. It should be borne in mind however that detention in

¹²Detail supplied by Statistics Department.

¹³Includes prohibition, maintenance, and affiliation orders, etc.

a detention centre (to which 2.42 percent of males were sentenced) is not available as a punishment for females. It is reasonable to assume that a number of those males so sentenced would have gone to borstal if there were no detention centres. This goes some way towards explaining the discrepancy, but other factors (including the frequency with which girls convicted of a vagrancy offence are sentenced to borstal training) are also relevant.

DEFERRED SENTENCE

Of females convicted and not fined 13.13 percent were dealt with by being "convicted and ordered to come up for sentence if called upon". A somewhat similar approach, which is occasionally used but for which no figures are available, is to adjourn the case for a specified period. If behaviour is satisfactory, the case may then be dismissed without conviction. During the period of an adjournment, the probation officer can offer help, guidance, and limited supervision, which may be particularly effective with an older woman who has offended for the first time. Another sentence which provides for limited help from the probation officer is the fine which must be paid under the probation officer's supervision.¹⁴

These methods give some types of offenders the assistance needed to sort out their affairs. Some, moreover, may be encouraged to seek medical care or psychiatric help which they might not be willing to accept if directed by an order from the Court.

Of the 125 women who were convicted and sentencing deferred, the majority (66) had committed offences of dishonesty, and 24 had been found guilty of vagrancy. The other offences covered a wide range, from assault to failure to send a child to school.

PROBATION

During the last few years, the number of females released on probation has increased markedly. In 1950, for example, 170 were so released, in 1955, 184, and in 1960, 221. In 1965, however, the number had risen to 349, an increase of the order of 50 percent in five years.

Over the 12-year period from 1953 to 1964, 2,746 women were released on probation. During the same period 519 appeared before the Courts for a further offence or for a breach of probation. Although many of the 1964 releases would not have completed their terms of probationary supervision during that year, and the 1953 figures include some completing probation from previous years, it is reasonable to conclude that

¹⁴Criminal Justice Act 1954 (s. 6 (1)).

about 81 percent of the women released on probation during this 10-year period committed no further offence or breach of probation while under supervision. A similar proportion was reported in an English study.¹⁵

If a probationer commits a further offence, or is brought before the Court for a breach of probation, it does not necessarily follow that probation has been useless. It must be remembered that the probationer is being asked to make a complicated readjustment in her way of living which may take time and patience to effect. The Cambridge Study quoted above¹⁶ found that about 50 percent of initial "failures" did not offend again during a three-year period after their probation term ended.

The New Zealand Courts clearly recognise that one failure under probation does not necessarily call for harsh measures, as the following table shows.

TABLE 11¹⁷

Females Charged with Breach of Probation 1964

Of 60 females charged with breaches of probation, the results of the Court hearings were as follows:

- 3 Dismissed.
- 4 Discharged, section 42.
- 11 Imprisonment.
- 6 Borstal.
- 4 Probation.
- 7 Convicted and ordered to come up for sentence if called upon.
- 12 Fined.
- 13 Convicted and discharged, or ordered to pay costs.

Only 28.3 percent of the cases were sentenced to institutional treatment. Moreover, because of the way the statistics are gathered, some parolees on release from prison or some other form of detention would be included.

The offences for which females were released on probation are shown in the next table:

¹⁵Radzinowicz (ed.) *The Results of Probation*. A report of the Cambridge Department of Criminal Science. Macmillan, London 1958.

¹⁶Ibid.

¹⁷Justice Statistics 1964. Detail supplied by Statistics Department. Magistrate's Courts distinct cases only.

TABLE 12

*Offences of Females Released on Probation*¹⁸

1964			Total Convictions	Released on Probation	Percent Convicted Released on Probation
Common assault	..	..	34	2	5.9
Abortion	..	..	1	1	100.0
Concealment of birth	..	..	2	1	50.0
Cruelty to children	..	..	6	3	50.0
Bigamy	..	..	3	1	33.3
Burglary and breaking and enter- ing	..	..	21	6	28.6
Embezzlement	}	..	37	20	54.1
Theft as a servant		..			
Theft	..	..	451	146	32.4
Receiving	..	..	14	6	42.9
Fraud and false pretences	..	..	80	30	37.5
Arson	..	..	4	3	75.0
Converting car	..	..	9	2	11.1
Converting bicycle	..	..	1	1	100.0
Wilful damage	}	..	18	2	11.1
Trespassing		..			
Forgery	..	..	17	6	35.3
Indecent, riotous, or offensive con- duct	..	..	59	1	1.7
Obscene, threatening, or abusive language	..	..	48	4	8.3
Assaulting, resisting, or obstructing Police	..	..	6	1	16.7
Other vagrancy	..	..	171	47	27.5
Excessive speed in motor vehicle			2,312	1	0.4
Negligent or dangerous driving	}	..	1,400	1	0.7
Driving without due care and attention		..			
Breach of probation	..	..	53	4	7.6
Charges under Child Welfare Act			2	1	50.0
Unlawfully opening, delaying, post- al packet	..	..	1	1	100.0
False declaration in connection with war pension	..	..	1	1	100.0
False declaration under Social Security Act 1939	..	..	4	2	50.0

¹⁸Distinct cases, Magistrates' Courts, 1964. Detailed figures supplied by Statistics Department.

INSTITUTIONAL TREATMENT

Although the number of women in prison or borstal has risen during the last 10 years, the increase has occurred mainly in the 15-24 age group. The number of women aged 30 and over in prison has not risen in spite of the increasing population.

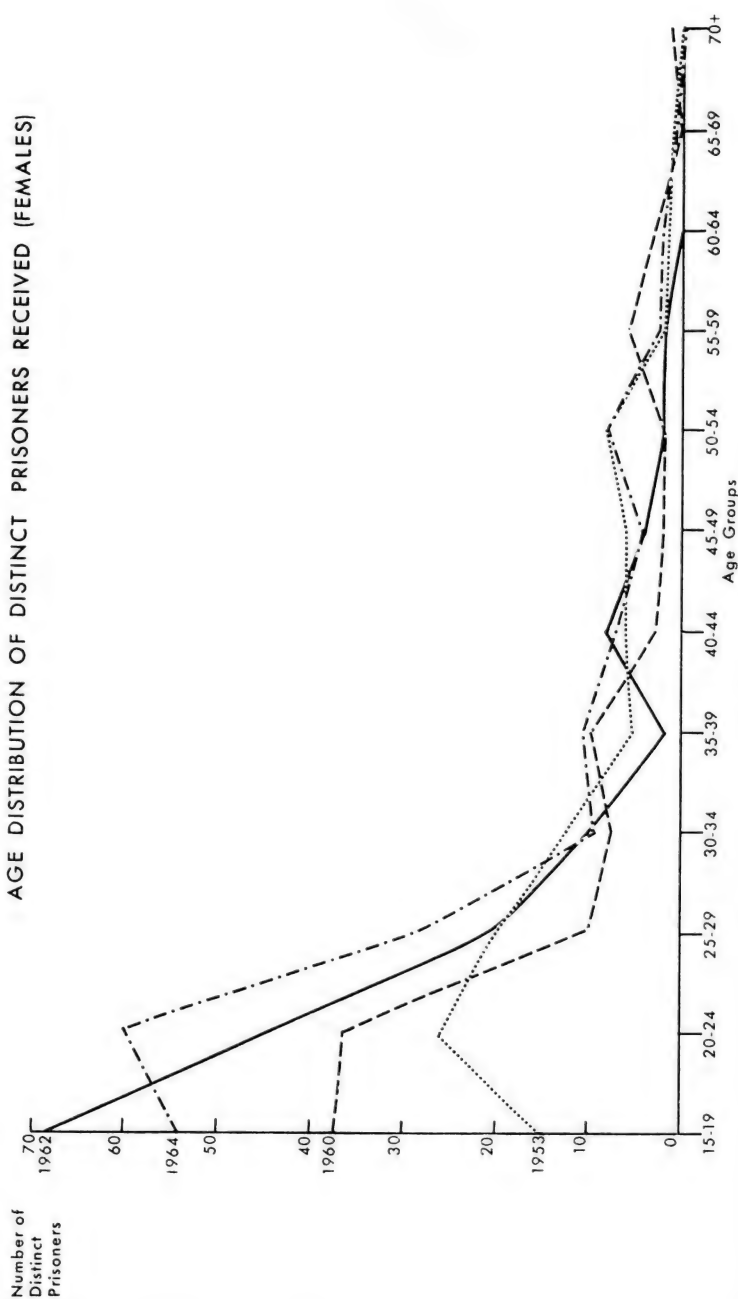
The big increase in female inmates in the younger age group must give cause for concern. A comparison of the ages of women sentenced to prison or borstal in 1955 and in 1965 shows that the proportion of inmates aged 30 and over fell from 44 percent in 1955 to 20 percent in 1965, while the proportion of inmates aged 15-19 increased from 17 percent in 1955 to 34 percent in 1965. In the 15-19 year age group actual numbers of "distinct prisoners received" rose from 21 in 1955 to 66 in 1965. In the 20-24 age group numbers rose from 25 to 60 and in the 25-29 age group numbers rose from 19 to 27.

TABLE 13

Age Distribution of Female Prisoners Received

Year	Age Group												
	15- 19	20- 24	25- 29	30- 34	35- 39	40- 44	45- 49	50- 54	55- 59	60- 64	65- 69	70+	
1953	..	15	26	20	12	5	6	6	8	2	2	1	..
1954	..	14	29	18	10	10	5	12	4	2	..	3	..
1955	..	21	25	19	18	9	6	9	8	2	..	..	..
1956	..	29	17	16	13	13	6	5	10	6	..	1	1
1957	..	30	20	15	13	14	6	5	6	8	..	..	1
1958	..	34	17	10	11	5	3	4	8	3	2	..	1
1959	..	33	34	12	13	6	4	4	2	1	2	1	..
1960	..	37	36	10	7	10	3	2	2	6	3	..	1
1961	..	53	43	13	8	13	7	2	..	2	1	..	..
1962	..	68	44	20	10	2	8	4	2	2	..	..	..
1963	..	60	55	18	11	6	3	6	4	4	2	..	..
1964	..	54	60	28	9	11	7	4	8	3	1	1	..
1965	..	66	60	27	13	7	6	7	3	..	2	..	..

AGE DISTRIBUTION OF DISTINCT PRISONERS RECEIVED (FEMALES)



One possibility is that this changed distribution among age groups could relate to the changing age structure of the population. A comparison of population figures with numbers of "distinct prisoners received", is therefore made in the following table:

TABLE 14¹⁹

Female Prisoners (Including Borstal Trainees) per 100,000 Population Aged 15-19 and 20-24

Year	Age group	Total Population	Number of Distinct Prisoners	Prisoners per 100,000 Population
1951	.. 15-19	63,583	21	33
	20-24	68,957	21	30
1956	.. 15-19	76,660	29	38
	20-24	66,491	17	26
1961	.. 15-19	92,420	53	57
	20-24	79,410	43	54
1963	.. 15-19	105,760	60	57
	20-24	85,610	55	64

It is evident that the number of "distinct prisoners" in the age groups 15-19 and 20-24 have increased faster than the total population of those age groups.

The next table analyses the offences committed by females who were sentenced to detention from 1946 to 1964.

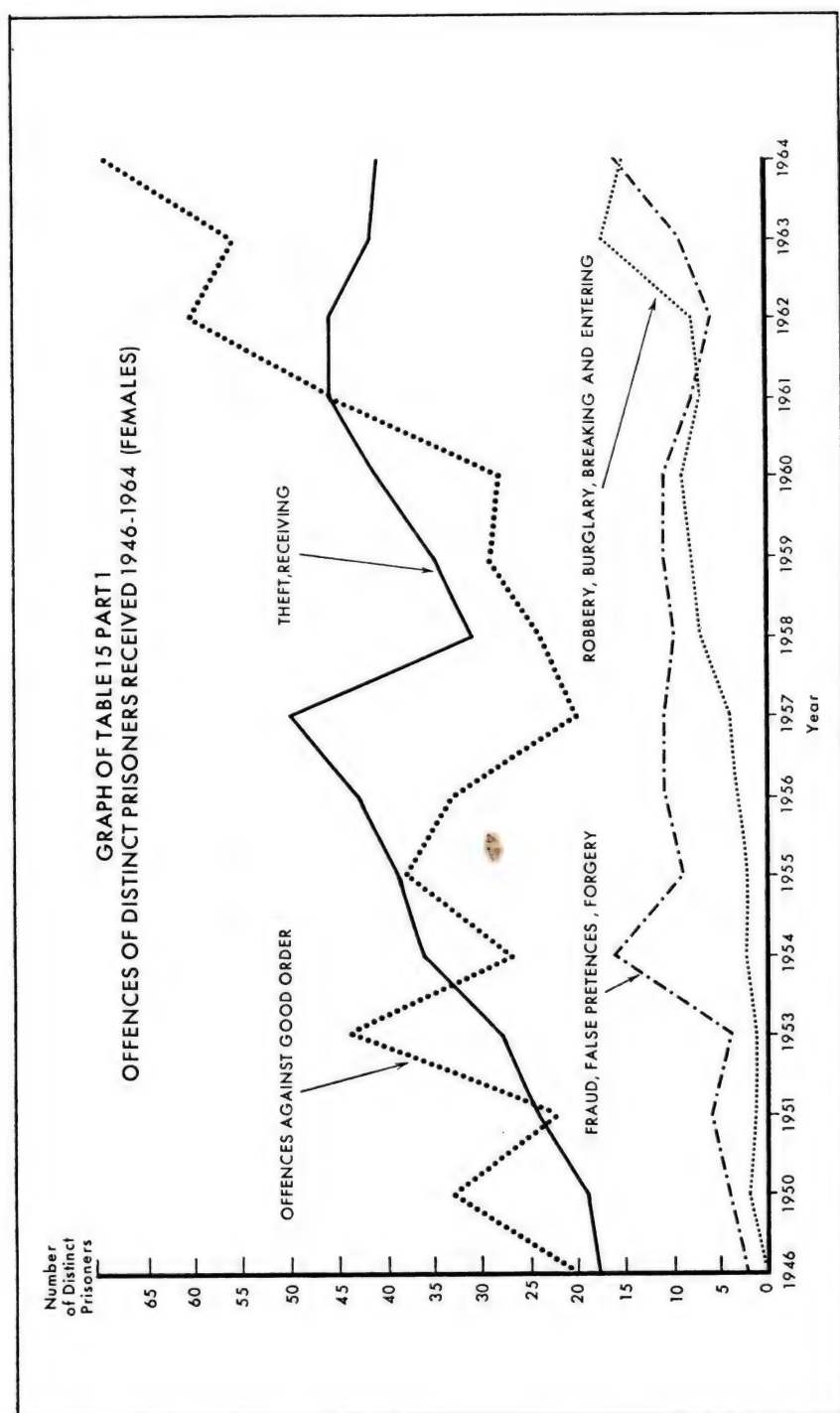
¹⁹Figures for 1951 and 1956 are taken from census publications. 1961 and 1963 figures are Department of Statistics estimates of mean annual population, (females).

TABLE 15

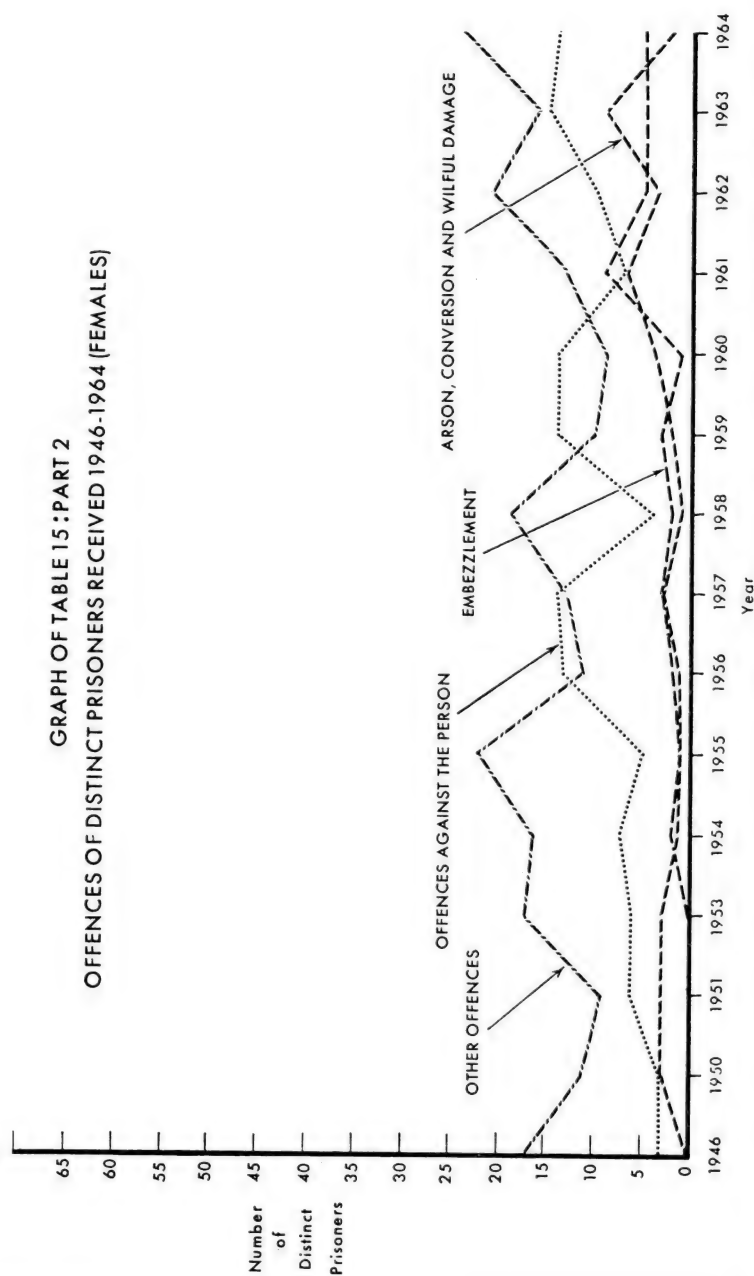
Offences of Distinct Female Prisoners Received²⁰

Year	Offences Against the Person	Robbery, Burglary, Breaking and Entering	Embezzlement	Theft and Receiving	Fraud, False Pretences, and Forgery	Arson, Conversion, Wilful Damage	Offences Against Good Order	Other Offences	Total
1946	3	..	..	18	2	..	20	17	60
1950	3	2	..	19	4	3	33	11	75
1951	6	1	..	24	6	3	22	9	71
1953	6	1	..	28	4	3	44	17	103
1954	7	2	2	36	16	1	27	16	107
1955	5	2	1	39	9	1	38	22	117
1956	13	3	2	43	11	1	33	11	117
1957	14	4	3	50	11	3	20	13	118
1958	4	7	2	31	10	1	24	19	98
1959	14	8	3	35	11	2	29	10	112
1960	14	9	1	41	11	4	28	9	117
1961	7	7	9	46	8	7	45	13	142
1962	10	8	5	46	6	4	60	21	160
1963	15	17	5	42	9	9	56	16	169
1964	14	15	5	41	16	2	69	24	186

²⁰New Zealand Justice Statistics.



GRAPH OF TABLE 15: PART 2
OFFENCES OF DISTINCT PRISONERS RECEIVED 1946-1964 (FEMALES)



It will be seen that almost all the increase in imprisonment or borstal training is in respect of the offence groups of theft (which includes all types of theft, attempts, and receiving), and offences against good order (which includes all kinds of disorderly conduct, drunkenness, and vagrancy). It is significant that "vagrancy" as the term is applied in practice in New Zealand is largely a young woman's crime. We have already seen that almost all the increase in female offending during the last 12 years is in the areas of theft and vagrancy.

The following tables give further information concerning sentences of imprisonment or borstal training imposed on women and girls in 1964. (All figures are taken from Justice Statistics 1964):

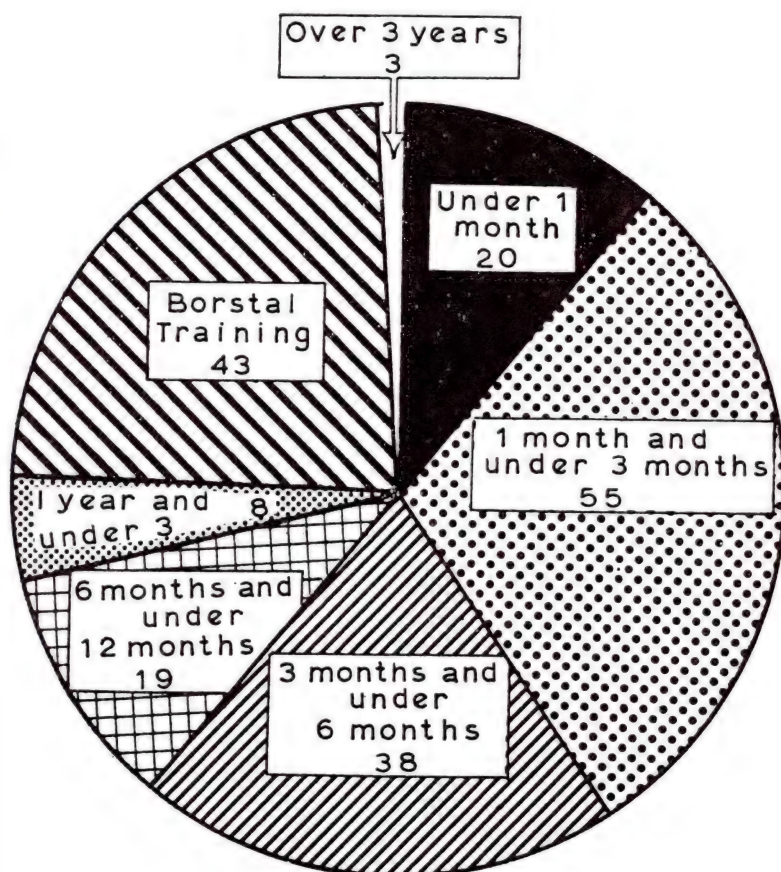
TABLE 16

Distinct Prisoners Received 1964—Female Offences and Sentences

Offence	Nature of Sentence	
	Imprisonment	Borstal Training
Manslaughter	5	..
Common assault	5	..
Incest	1	..
Cruelty to children	3	..
Burglary—breaking and entering ..	5	10
Embezzlement	5	..
Theft	28	10
Receiving stolen property .. ..	..	3
Fraud and false pretences	7	2
Converting motor vehicle .. ..	..	1
Wilful damage, trespass	1	..
Forgery and uttering	6	1
Drunkenness	4	..
Indecent or offensive conduct	1	1
Obscene or abusive language	3	..
Assaulting, resisting or obstructing police ..	1	..
Keeping a brothel	3	..
Other vagrancy	43	12
Breach of probation	7	3
Offences relating to sale and use of poisons and drugs	1	..
Selling liquor without a licence	3	..
Stowaway	1	..
Breaches of Social Security Act	2	..
Totals	143	43

NUMBER OF DISTINCT PRISONERS
RECEIVED BY LENGTH OF SENTENCE
1964

- Females -



Total Distinct Prisoners 186

TABLE 17

*Length of Sentence**Distinct Prisoners Received 1964—Length of Sentence*

Under 1 week	..	..	3
1 week and under 1 month	..	..	17
1 month and under 3 months	..	..	55
3 months and under 6 months	..	..	38
6 months and under 12 months	..	..	19
1 year and under 2 years	..	..	6
2 years and under 3 years	..	..	45 (includes 43 borstal training sentences)
3 years and under 5 years	..	..	1
5 years and over	..	..	2

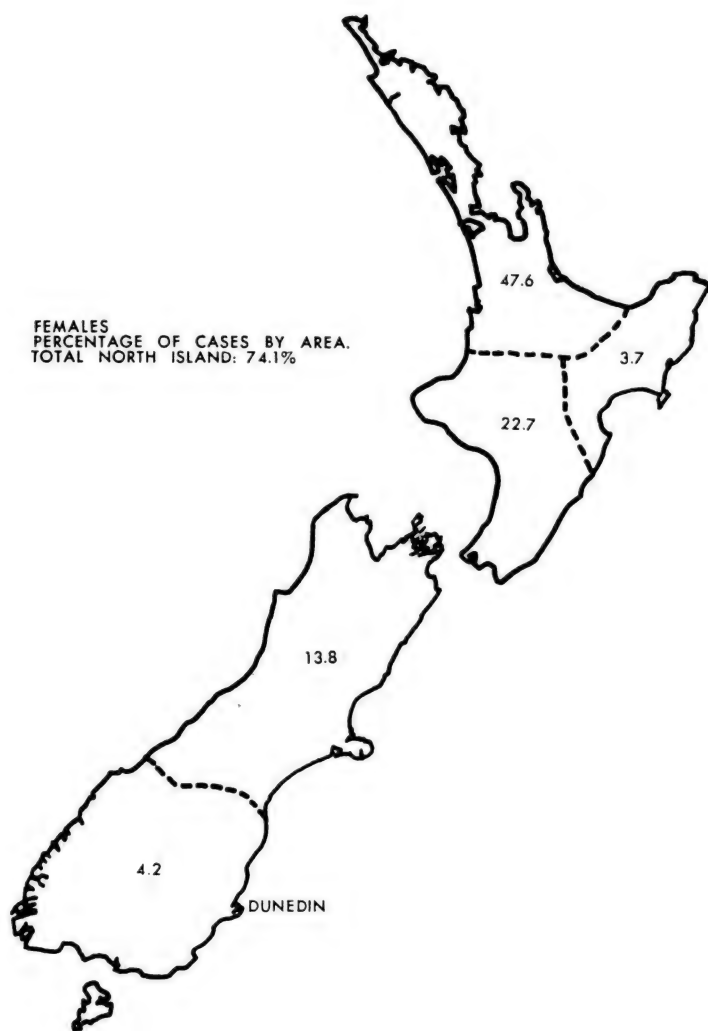
Thus of 143 females sentenced to imprisonment in 1964, 75 received sentences of under three months.

As is more fully illustrated in the chapter on remand, many of the people received in prisons all over the country finally received sentences other than imprisonment. In 1964 a further 218 women passed through prisons on remand in cases which did not finally result in a prison or borstal sentence.

Women and girls from all over New Zealand, who are serving sentences of imprisonment of more than three months, are normally transferred to Dunedin, unless there are very pressing reasons why they should remain in some other centre. The result is that most of them are taken far away from their homes. This is forcibly illustrated by the attached map.

Of the 94 women and girls received at Dunedin Prison for Women during 1964, only a very small proportion came from Dunedin or further south. For the rest, imprisonment in Dunedin meant isolation from family and friends, and very little possibility of receiving visits and thus maintaining even a minimum contact with parents, husbands, or children. Restriction of letter writing to three letters a week adds to the feeling of isolation and is regarded as a severe deprivation by some inmates. The older woman offender, cut off from her normal form of living, suffers from many tensions, deprivations, and fears.

MAGISTRATES COURTS, 1964
SUMMARY CONVICTIONS: FEMALES
SENTENCED TO IMPRISONMENT
OR BORSTAL TRAINING



The problems of adult women sentenced to varying terms of imprisonment are not eased by the very real administrative difficulty of providing for such a small group. From an economic point of view it does not seem to be possible to do more to diversify female institutions.

Some recognition of the need to keep male prisoners within reasonable reach of their families is seen in the disposition of men to institutions within visiting reach, and in the help provided for wives to make regular visits. The wife and family of a male prisoner may be kept together by a social security benefit without too much invasion of the family home. Frequently, the husband of a woman prisoner must take into his home another woman—relative, housekeeper or the like—who endangers the eventual security of the woman as a wife.

Such considerations become added concerns for an adult woman who is imprisoned for any lengthy period. The need to keep a woman near her family is urgent and necessary if she is eventually to be restored successfully to the community. Not the least of her worries while in prison is the risk of permanent harm to her children as the result of separation.

It is natural to wonder what kind of women are imprisoned. The overwhelming impression is that they are "just ordinary women". Few, if any, are dangerous; few if any, are a security risk. They do, however, tend to have more unfortunate lives than most people, as the following examples show. They are typical of female offenders generally.

F.R. Brought up by father and unsympathetic stepmother among very many step and half-siblings. In child welfare homes from the age of nine years.

H.P. Adopted at two. Adoptive parents died when eight. Ill-treated in next home.

R.M. Was 10 when her mother died. Her father was in prison at the time.

P.J. Was adopted and compared unfavourably with the parents' own child.

O.P. Father heavy drinker and violent towards his wife and children. Started running away from home at 14.

C.R. Mother unstable. Was placed in an orphanage for two years during a disturbance in parents' marriage.

M.S. "They said they couldn't control me. That was nonsense; no-one ever tried."

G.P. Parents divorced when she was 16 and both re-married. Mother and step-father have since separated.

S.H. Oldest of 10. Mother often unwell. Serious burns at 13—was six months in hospital.

I.P. Husband childish, petty, and violent.

T.R. Father sent his wife and daughters out to work and collected all their earnings. Suspected of incest.

K.W. Father died when she was six months old. Brought up by mother and older brother who had little time for her.

M.B. Father a heavy drinker and poor provider. Left home to find work.

L.R. Parents separated when she was four. Lived with relatives for one year, and then in an orphanage for four years. Returned to father and step-mother.

E.S. Father frequently drunk and violent. Pattern repeated in her marriage. Described as "a poor weak character who drifted from one intolerable situation to another."

P.S. Adoptive father died when she was nine and new step-father sent her back to natural parents.

S.E. Adopted. Spent a lot of time in welfare homes.

N.R. Father drank. Mother had a series of mental breakdowns. In an orphanage from five to 13 years of age.

J.J. Mother deserted family when she was four. Children were placed in an orphanage and visited by the father until he died. She was ten at this time.

T.O. Mother has a history of psychosomatic illness. Daughter also.

Many of the girls who are sentenced to borstal training have never had a settled way of living. They have usually gone through a succession of jobs, each lasting for a short time, with considerable periods of unemployment (sometimes due to ill-health). Often they have been promiscuous, immature, and irresponsible. Two illustrative cases are quoted:

B. B.	1961—Hospital domestic, living in	..	6 months
	Biscuit factory ..	..	1 week
	1962—Foodstuffs store ..	..	2 months
	Health camp ..	..	2 weeks
	Shirt factory ..	..	1 day, and 8 days
	Fruit shop ..	..	2 weeks (probation)
	Domestic ..	..	6 weeks
	Hotel-Domestic ..	..	3 weeks
	Domestic ..	..	2 weeks

B.B. had nine different jobs in two years. During 1962 she worked for about six months, and spent, in total, five months unemployed.

S. P.	January 1959—Shop assistant	..	..	3 months
	Machinist ..	..	..	3 months
	Relieving nurse-aid ..	..	..	2 weeks
	Shop assistant three placements	..	..	18 weeks
	July 1961—Factory work ..	..	..	1 month
	August—Waitress ..	..	..	2 weeks

In a period of two years eight months, S.P. was in employment for only 12 months.

Frequent changes of employment among teenage girls are, of course, not confined to offenders. Joan Metge²¹, in her study of Maori immigrants in Auckland, noted that "nearly all went through an unsettled period during which they experimented with employment, residence, and leisure activities. Sometimes this period lasted only a few months, in other cases for as much as two years." It may also be common among European girls when it is easy to get jobs, though no studies have been made to confirm this hypothesis.

In the opinion of experienced prison officers, very few female inmates or borstal trainees have had the benefit of what most people would consider a "normal" up-bringing. More detail on this question must await further study. It must also be borne in mind that many people manage to survive upbringings that are less than perfect without reacting to their difficulties by serious law-breaking.

PAROLE

No matter what brings a woman into a penal institution, there must come a time when she leaves to face the world outside.

Those who have served sentences of borstal training, imprisonment for 12 months or more, or a shorter period of imprisonment which is ordered to be followed by a period of probation, are released on parole. In the case of borstal training the period on parole is 12 months. Imprisonment for 12 months or longer carries parole for the unexpired residue of the sentence (if any) or 12 months, whichever is the longer. For shorter periods of imprisonment, the Court decides the length of any parole, the maximum being 12 months.

For many girls, parole demands a profound adjustment in the whole way of life, and this is particularly true of those who have had a long history of institutional treatment. It is by no means uncommon for girls to be released from Arohata having spent most of the previous four to six years in institutions, and some of them clearly need more help in adjusting to life in the community than is now given them.

Nevertheless many succeed, either because of a change of outlook and greater maturity, or because they marry or otherwise settle down. Examples are given by way of extracts from probation officers' and other official reports.

W.P. Her probation officer's termination report said: "It would seem that she was determined from the time of her release to make a fresh start in life and to live an acceptable life in the community, and in this she received every encouragement from me . . . She has given up drink

²¹Metge, Joan. *A New Maori Migration: Rural and Urban Relations in Northern New Zealand*. London. Athlone Press, 1964, p. 133.

. . . I have always encouraged her to speak freely of her problems and she has always been keen to learn and act on the advice of those she respects." This girl had shown disturbed behaviour and had institutional treatment from March 1958, to March 1963.

R.S. "She settled down well and married a young man she had known before going to borstal. Her appearance improved. Her general outlook is good and there is little doubt that marriage has made all the difference to her."

M.R. "She has achieved her goal and terminates parole married and expecting to be confined again within two months. . . . She will need all her resources to make a success of her marriage, but further offending of a criminal nature is unlikely."

F.M. "Put herself in safe circumstances by living at home with her parents until her marriage. By doing this she was relieved of direct pressure to work, avoided the temptation of poor company, and won her parents' consent to her marriage with a Maori lad, who is quiet, conscientious, but reasonably self assured. She is blossoming as a happy young wife."

The pre-release report on Y.P. said: "She already has a crippling idea of her own worthlessness and asks, 'How could any really decent man or person be interested in me?' Thus she is likely to gravitate to a poor type of companion." Later, however, the prognosis improved: "From being a coarse, earthy type of young woman she now presents a very pleasant disposition . . . She has been assisted considerably by her recent marriage to an ex-probationer of this office. While hopeful that this adjustment continues, it is nevertheless early days . . ."

V.R. survived her parole by good luck rather than by any real efforts on her own behalf. "She was for a time actively engaged in dishonesty with a fellow parolee and was fortunate indeed to avoid arrest . . . She married a parolee, the brother of a fellow-parolee, but the marriage quickly collapsed due to both partners' immaturity and selfish attitudes. However, the break appeared to improve her relationships with her own family. The future is unpredictable."

MAORI OFFENDERS

At 31 December 1965 there were 98 female inmates of penal institutions, of whom 38 were Maoris. Maoris comprised 38.8 percent of female inmates, an even higher proportion than males, 34 percent of whom were Maoris.

At the date for which these figures are given, Maoris comprised 7.4 percent of the total population of New Zealand. Thus the number of female Maoris in penal custody is out of all proportion to their number in the population. The following table shows the position:

TABLE 18

Distinct Prisoners Received 1965²²

Age	Maoris	Age Group Population	Prisoners/ 100,000 Population	Non Maoris	Age Group Population	Prisoners/ 100,000 Population
15-19	30	10,110	296	32	107,800	29
20-24	33	7,460	442	25	82,900	30
25-29	9	6,840	131	14	72,400	19
30-39	10	10,700	93	11	141,600	7
40-49	2	6,580	30	7	144,300	4
50-59	..	4,140	0	4	124,300	3

Although the numbers are small, the differences are striking. In effect, a Maori female has between eight and fifteen times as much chance of being imprisoned as has a non-Maori female of the same age.

A more detailed picture is available in respect of persons arrested and is given in Table 19. The total figures are shown, uncorrected for numbers in the population.

TABLE 19²³*Total Charges**Magistrates' Courts 1964—Arrest Cases—Females Convicted*

Age Group	Offences Against Person	Against Property	Forgery etc.	Against Good Order	Other Offences	Total	Maoris only	Percent Maoris
15-19	.. 5	313	28	136	42	523	211	40.3
20-24	.. 10	214	43	108	19	394	166	42.1
25-29	.. 3	158	3	42	21	227	146	64.3
30-39	.. 3	156	49	51	13	272	61	22.4
40-49	.. 7	108	33	57	18	223	26	11.7
50-59	.. 7	46	..	39	1	93	5	5.4
60+	.. ..	12	..	21	..	33	..	..
Total all ages	34	1,007	156	454	114	1,765	615	..
Maoris only	13	311	39	197	55	615	..	..
Percentage Maoris	38.2	30.9	25.0	43.4	48.2	34.8	..	..

The highest proportion of Maoris is to be found under the headings "against good order" and "other offences". Of the offences against good order the great majority consisted of drunkenness, offensive or indecent language and vagrancy, and it is likely that Maori girls form a particularly large proportion of females convicted of vagrancy offences. The most common of the "other offences" were breach of probation and offences against the Sale of Liquor Act.

²²Justice Statistics 1965.²³Justice Statistics 1964. Additional information supplied by Statistics Department.

If a Maori woman or girl comes before the Court, is she more likely to be convicted than her non-Maori counterpart? There are indications that she is, as the next table indicates:

TABLE 20

*Proportion Convicted—Maoris and Non-Maoris—Magistrates' Courts
1964*

		Total Charges	Summary Convictions	Percent Convicted
Maoris Only				
Offences against person	..	23	13	56.5
Offences against property	..	344	311	90.4
Forgery, etc.	..	39	39	100.0
Offences against good order	..	212	197	92.9
Other offences	..	64	55	85.9
Total	..	682	615	90.2
Non-Maoris Only				
Offences against person	..	34	21	61.8
Offences against property	..	891	696	78.1
Forgery, etc.	..	120	117	97.5
Offences against good order	..	325	257	79.1
Other offences	..	70	59	84.3
Total	..	1,440	1,150	79.9

Assuming that these figures are typical of other years, there is a clear distinction unfavourable to Maoris. This is most noticeable for the group of offences under the heading of "offences against good order", which as we have seen consist principally of drunkenness, bad language, and vagrancy.

The impressions of field workers confirmed by interviews with girls in borstals suggest that part of the explanation for the difference in conviction rates may be in differences of attitude, the Maori girl being more willing to admit she has done something wrong and to accept correction than is the European girl, who often pleads not guilty and is represented by counsel.

In any case where a girl is not represented by counsel (and these are often the least sophisticated girls) there is the possibility that she will plead guilty because she knows that she has committed part of the offence and does not realise that another element has to be proved—for example, intention to deprive the owner permanently in the case of theft; knowledge that an article is stolen in the case of receiving.

Despite the differences between Maoris and non-Maoris as shown in the foregoing tables, there is no evidence whatever of deliberate discrimination against Maori girls in legal and law enforcement processes.

In considering all the tables which relate to Maori offenders and defendants two things should be borne in mind. First, there is a possible source of error in the method of classifying a person as "Maori" or "non-Maori". There may be a tendency for the person who is less than half-Maori to be described as "Maori" in Court and penal returns when she would not be so classified in the population figures. Because the numbers are small, a few such errors would influence the final results considerably.

Secondly, it must be stressed that Maoris who break the law represent a very small proportion of the Maori population. The "Distinct Prisoner" figures given in Table 18 showed that in the age groups with the highest offending rate fewer than five women in 1,000 were sent to prison or borstal in 1964. Using the "convictions for arrest cases" figures (Table 19) we find that there were 615 convictions on total charges in 1964 for Maori women out of a population of 46,830 women aged 15 or over. Because one woman may be convicted on several charges, this means that fewer than 13 women out of every 1,000 were arrested and convicted.

These figures need to be borne in mind in considering factors which may lead to difficulty in social adjustment. The conclusion is inescapable that all but a tiny minority of Maori women are coping very well with difficulties that must often be great.

CAUSES OF FEMALE OFFENDING

Probably only in periods of unusual stress is a woman likely to break the law. The stress may be physical, emotional, economic or social. A combination of these various sources of stress is often required before serious lawbreaking occurs.

Periods of particular physical stress are likely to occur:

- (a) during adolescence;
- (b) during pre-menstrual or menstrual periods;
- (c) at the menopause;
- (d) during pregnancy and for a short time after the birth of a child.

During these times, hormone activity tends to leave a woman more vulnerable than at other times. Irritations, frustrations, and annoyances that she would normally cope with adequately, become magnified out of all proportion. Information on these matters is seldom included in case records, but the following story may be typical:

"I had my period at the time and my varicose veins were aching terribly. They always do, but they are worse then. I gave him a hiding." (A.B.—manslaughter, caused death of a child aged three.)²⁴

²⁴See also Dalton, K. *Menstruation and Crime*. Brit. Med. J. December 30, 1961, p. 1752.

Adolescence is a peak period for crime among both girls and boys. Often a girl's record shows that her first offence against the law was committed at 12 or 14. The peak incidence of distinct prisoners received is reached between 16 and 19 years of age. This is a world-wide phenomenon and many theories have been formed to account for it. One approach is based on a view of life as a series of developmental tasks.

During adolescence a girl must learn to be a woman; she must become financially and emotionally independent of her parents; and she must gradually assume all the responsibilities of adult citizenship. These are all tasks of great complexity. Such tasks present the individual with problems that must be dealt with immediately, that cannot easily be put aside or ignored. When the ability to trust other people and to make friends has suffered through unfortunate experiences in early childhood, or when a girl's willingness to think of herself as a woman has been handicapped either by premature sexual misadventure, or by having an inadequate mother with whom she cannot identify, or by a father who has always treated her as a boy, learning a feminine social role presents grave difficulties.

If the family can give emotional and financial support during this period, it can be traversed without causing too much harm. Many of the girls appearing before the Courts seem to have made an angry and complete break with their families, or their families have disintegrated through death, separation or divorce before this time. Others have come from large families and have been "lent" to childless relatives. If, after some years, the sickness or death of the relative results in the child's return to its "original" family, there may be difficulty in re-establishing normal relationships.

An experienced probation officer has made the following comment:

"Children seem to be appearing before the Court at younger ages for quite serious offences, e.g., series of burglaries, thefts and shoplifting. The most frequent age now seems to be 13 and 14 years. By the time we are getting 17 and 18-year-old offenders, they are, on the whole, a much harder group than the ones I handled some 10 to 15 years ago. In the past 10 years, there has been a decided advance in the sophistication of the younger group of girls, who are fairly experienced by the time we get them."

Medical reports suggest that children in New Zealand are now reaching physical maturity at younger ages than they did a generation ago. Social maturation, however, does not necessarily keep pace with physical maturation and discrepancies can cause serious difficulties. Society today is more complex and sophisticated, and the demands it makes are greater and more exacting. Teenagers particularly are forced, largely by the adult community, more into the limelight, and are made more conscious of their in-between status. It may well be that in these things lies the explanation for the apparent increase of crime among young women.

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Chapter 8

CRUELTY TO CHILDREN

Probably no crime arouses as much horror as that of cruelty to a child. Sensational cases, reported fully in the press, are widely discussed. Many people find it impossible to comprehend that a sane parent would knowingly subject his own, or her own, child to extreme violence or cruelty. Other parents, aware of the dangerously narrow division between reasonable and unreasonable punishment, may wonder what stresses compel the parent who beats or perhaps kills his own, or her own, child.

In recent years increasing attention has been given to the problem of cruelty to children. Studies have been made in several countries, and evidence on the factors involved in this offence is accumulating.

The relevant provisions in New Zealand law relating specifically to children are contained in sections 152, 154, and 195 of the Crimes Act 1961:

“152. Duty of parent or guardian to provide necessities—(1) Every one who as a parent or in place of a parent is under a legal duty to provide necessities for any child under the age of sixteen years, being a child in his actual custody, is criminally responsible for omitting without lawful excuse to do so, whether the child is helpless or not, if the death of the child is caused, or if his life is endangered or his health permanently injured by such omission.

(2) Every one is liable to imprisonment for a term not exceeding seven years who, without lawful excuse, neglects the duty specified in this section so that the life of the child is endangered or his health permanently injured by such neglect”.

“154. Abandoning child under six—Every one is liable to imprisonment for a term not exceeding seven years who unlawfully abandons or exposes any child under the age of six years”.

"195. Cruelty to a child—Every one is liable to imprisonment for a term not exceeding five years, who, having the custody, control, or charge of any child under the age of sixteen years, wilfully ill-treats or neglects the child, or wilfully causes or permits the child to be ill-treated, in a manner likely to cause him unnecessary suffering, actual bodily harm, injury to health, or any mental disorder or disability".

In addition, a parent who ill-treats a child to such an extent as to kill it, is liable to be charged with manslaughter (s. 171 Crimes Act 1961). If the child is injured in such circumstances that the parent would have been guilty of manslaughter had it died, the parent is liable to three years imprisonment under the general provisions of the law. Other general offences in the Crimes Act deal with wounding or injury with various intents, ss. 188, 189. Finally, the crime of infanticide applies to a woman who kills a child of her own under the age of 10 where the balance of her mind is disturbed by childbirth or lactation.

In New Zealand, as in other countries, it is difficult to get adequate or reliable information on the incidence of cruelty to children. Relatively few charges are laid each year, as tables I and II indicate. With this offence, as with so many others, reported offences represent only a small proportion of those suspected to have occurred. Even when there is considerable reason to suspect cruelty, charges may not be laid because of the difficulty of establishing proof, or of determining which parent is responsible.

TABLE I
Information from Annual Reports: Police Department

		Offences Reported	Offences Prosecuted	Cleared by Means other than Prosecution	Uncleared	Committed Prior to and Cleared in Current Year
1959	Ill treating children, abandoning, etc.	..	30	15	4	..
1960	Ill treating children, abandoning, etc.	..	57	29	8	..
1961	Abandoning, stealing, or ill treating children	..	39	26	6	3
	Failing to provide necessities of life	..	2	..	2	..
1962	Abandoning, ill treating, or cruelty to children..	..	44	13	15	..
	Failing to provide necessities of life	..	6	3	2	..
1963	Abandoning, ill treating, or cruelty to children..	..	42	32	3	..
	Failing to provide necessities of life	..	2	1	1	..
				<i>No Offence found on Inquiry</i>		
1964	Cruelty and ill treating children	..	60	41	6	1
	Failing to provide necessities of life	..	5	..	..	..
1965	Cruelty and ill treating child	..	102	62	17	1
	Failing to provide necessities of life	..	7	3	3	..
1966	Cruelty and ill treating child	..	58	26	10	3
	Failing to provide necessities of life	..	6	1	..	..

TABLE II

Charges of Murder, Attempted Murder and Manslaughter Where the Victim was a Child 1960-64

Year	Sex	Age	Verdict	Sentence
1961	M	31	Guilty manslaughter	5 years imp.
	M	30	Guilty of failing to provide necessities of life	3 months imp.
	F	22		
	F	24	Guilty manslaughter (Jury recommended mercy)	3 years prob.
	M	27	Guilty manslaughter	6 years imp.
	F	27		6 months imp.
	F	23	Guilty assault and illegal beating child	6 months imp. + 1 year prob.
	M	28	Guilty exposing infant	4 years imp.
	F	22		6 months imp.
1962	F	26	Guilty infanticide	4 months imp. + 1 year prob.
	F	23	Guilty manslaughter	6 months imp. + 1 year prob.
1963	M	20	Guilty attempted murder and wounding	10 years imp.
	M	41	Guilty manslaughter	4 years imp.
	F	21	Guilty manslaughter	6 months imp. + 1 year prob.
1964	M	25	Guilty manslaughter	6 years imp.
	F	24		5 years imp.
	F	17	Guilty manslaughter	2½ years imp.
	M	23	Guilty manslaughter	4½ years imp.
	F	21		9 months imp.
	F	27	Guilty manslaughter	2 years imp.
	F	28	Guilty manslaughter (Jury recommended mercy)	9 months imp.
	M	22	Guilty of neglecting to provide necessities of life	9 months imp. + 1 year prob.

SUMMARY

Number children killed: 17.

Number males charged: 9. Average sentence 4.5 years.

Number females charged: 13. Average sentence 1.1 years.

In May 1965 the Department of Health¹ published an article called *The Battered Baby* written by a paediatrician who stated: "Injuries inflicted on infants and young children by their parents are far commoner than has been realised. Over the last few years such injuries have been recorded with increasing frequency, and the condition is now known as the Battered Baby Syndrome . . .¹

"Unfortunately, we in New Zealand are no less affected than larger nations. In the period of 18 months up to December 1964, nine cases were admitted to one metropolitan hospital and three cases have been admitted in the first three months of this year (1965). In the same

¹Watt, Dr J. M., *The Battered Baby*, Department of Health, Therapeutic Notes, No. 53, 12 May 1965.

hospital three young children have died of inflicted injuries in the past three years. The children who survived their injuries were all seriously ill, and some will be permanently crippled, either mentally or physically.

"Although it may be very difficult to prove parental assault as a cause of severe injury in children, it is relatively easy to reach a probable diagnosis.

"Once assault has been suspected, the known mortality rate of 25 percent in this condition makes treatment urgent and imperative if tragedies are to be avoided. The immediate need is for separation of the child from his environment, and this cannot wait upon full investigation of the injuries. The simplest and quickest way of achieving this is by admitting the child to hospital for treatment. At the same time the district child welfare officer should be informed of the situation, and the Child Welfare Division can be depended upon to investigate speedily. Further investigation by the Child Welfare Division or the hospital may justify notification of the Police Department, or, indeed, the doctor himself may feel that he should report the matter to the police. Whatever course is decided upon, however, the essential action is to remove the child to safety in order to protect him from further assault.

"Proof of parental guilt and long-term mismanagement may take some time, and the child cannot be left in danger for this period. Unless urgent action is taken to remove these children from danger, needless crippling or death may occur".

The pamphlet emphasised the need for preventive action. But doctors are sometimes hesitant to refer a case to police or child welfare authorities unless they have absolute proof on which to act. The following evidence was given at the trial of S.R.² on a charge of unlawfully killing her two-and-a-half-year-old child:

S.R. took her child to a doctor some months before death. When the doctor examined the boy's body he noticed that there were a number of bruises on the buttocks, the small of the back, and the front and the back of his chest. He asked for X-rays, suspecting skull fracture. The doctor thought at this time that the child could possibly be the victim of unnecessary bodily violence. No fractures were found, the blood count was normal—so the doctor prescribed an ointment and asked that the child be brought back in three weeks time. He was suspicious of the bruises, but did not communicate his opinions and thoughts to the child's mother. The child died about four months later, having been beaten about the head with either a closed fist or a blunt instrument.

Often at a trial neighbours give evidence that they have heard screams and cries coming from a home for long periods, and have done nothing about it. In such cases cruelty, finally resulting in the death of a child, may have continued for months with the knowledge of the neighbours, but no one in authority has been informed.

²These, like all other initials used, are fictitious.

In our society the importance placed upon privacy, and a natural distaste for interfering in other people's business, go a long way to protect parents from interference. In some respects such attitudes may be commendable, but cruel parents can shelter behind them, and only a doctor may acquire the evidence of what is happening.

Dr Eustace Chesser³, in an attempt to estimate the extent of the problem in England, used records supplied by the National Society for the Prevention of Cruelty to Children. Using figures for 1949 and 1950, he calculated "that between six and seven children out of every 100 are at some time during their childhood so neglected, or ill-treated, or become so maladjusted as to require the help of the N.S.P.C.C. One child in every 16 undergoes an experience at the hands of its parents or guardians which may easily warp its whole future attitude towards life. Nor is that experience invariably a mere incident plucked in isolation out of an otherwise normal childhood. Approximately 50 percent of all the 99,622 children reported to the Society in 1949-50 had previously been under the society's notice arising out of an entirely different incident which had been dealt with and the case closed at least six months before the event occurred which once again necessitated recourse to the N.S.P.C.C. There is thus a very substantial hard core of cases in which children suffer repeated neglect and cruelty, and which not even the persistent efforts of the N.S.P.C.C. can eradicate permanently."

Dr Chesser analysed 600 cases of neglect or cruelty to children coming before Magistrates' and other Courts in the years 1932-33 and 1944-47 (inclusive). He found the following to be precipitating factors:

	No.	Percent
Unwanted child	227	37.8
Low-grade mentality	214	35.6
Overburdened mothers	149	24.8
Poverty	143	23.8
Pathological cruelty	112	18.6
Broken homes	108	18.0
Irregular sex relations in the home	99	16.5
Housing	95	15.8
Ignorance	81	13.5
Drink	45	7.5
Selfishness	7	1.1

(NOTE—Figures do not add up to 100 percent because it is very rare to find any one cause alone behind offences of this nature.)

Unless a full scale study were undertaken, it would not be possible to extract comparable figures for New Zealand. However, many of the

³Chesser, Eustace. *Cruelty to Children*, Gollancz, London, 1951.

precipitating factors disclosed by Chesser recur with distressing frequency in case records studied in the Department of Justice. The factors which emerge most clearly are: separation of the child from the family; parents repeating the cruel punishment they experienced themselves; poor health of one or both parents; below-average intelligence; ignorance about child development; external pressures, such as financial difficulties, poor housing, marital discord, etc; one child being used as a scapegoat in a difficult family situation; psychiatric factors.

None of these factors alone is a sufficient explanation of the phenomenon of cruelty to children, but in varying combinations they produce a stressful situation to which the parent may respond by attacking a child. The following discussion elaborates these factors, and relates them to one another.

SEPARATION IN THE FAMILY

The separation of children from one, or both of their parents can happen in many ways. The circumstances range from illness of the child or the parent, to legal separation, or accidents of various kinds.

Some tragic cases can be traced to the difficulties and delays immigrants encountered in gaining entry permits for their wives and then for their children. In other cases the major difficulty is financial, and the parents leave their children with relatives until they save enough money for fares.

Similar problems sometimes beset internal migrants. Perhaps the major population movement in New Zealand over recent years has been the shift of rural families and individuals into the cities to seek employment. City housing is not always easy to find and some members of the family may go first to the city to arrange accommodation before others follow.

There are many other circumstances that can result in children being separated from their parents at a crucial stage of development. The difficulty many fathers experienced in establishing satisfactory relationships with their children when they returned from overseas war service has been frequently noted. In these cases it was sometimes found that one result was that the children became very difficult to manage. Some such children are present inmates of our prisons. This is perhaps related to the "delinquent generations" phenomenon found by Wilkins to occur after major wars.⁴

Separation due to the ill-health of the mother is often unavoidable, but it is doubtful whether every possible means is being used to reduce the consequent disruption of the family. Indeed, the risk to family relationships of disruption for whatever cause is often not sufficiently

⁴Wilkins, L. T., *Delinquent Generations*. Home Office Research Report (H.M.S.O.) 1960. See also Slater, S. W., Darwin, J. H., and Pearce, W. L., *Delinquent Generations in New Zealand*. Joint Committee on Young Offenders Research Report, 1963.

recognised. There are many instances of children being placed in orphanages or boarded out during such emergencies, when the mobilisation of local domestic help could have avoided separation.

The most desirable solution, when a mother is ill or absent, is for the children to stay with their father in their own home, and for someone to come in and help. But when no relatives are available, where there is no voluntary social service such as that provided by the nursing Sisters of the Assumption, and no money to pay for help in the home, the position becomes very difficult. A mother who is not normally a wage-earner is not eligible for a sickness or invalid's benefit when she is ill, although such a benefit would often be sufficient to pay for help to keep the family together. Although a father is eligible for a benefit if he leaves work to look after his family while his wife is ill, many men are not able to make the considerable financial sacrifice involved.

Society assumes more direct responsibility when a mother is imprisoned for some offence which is often unrelated to her management of the children. Fortunately few women with children are imprisoned, partly because of the recognition by the Courts of the unfortunate side-effects of such a step. However, some are so punished, and the most anxious and unhappy people in our prisons are often mothers separated from their families and thus prevented from carrying out what they themselves, and everyone else, see as their major duty. Again, there is the problem of caring for the family in the mother's absence. Very often the solution is for an older girl in the family to be kept at home to assume responsibilities that would strain the capacity of a mature woman.

Mothers with young families seldom come into conflict with the law. When they do, every effort must be made to find appropriate penalties other than imprisonment. Often the circumstances of the affected families are complex and difficult, and probation appears to be the most useful of the possible alternative sentences. If this is the choice, it is important that the probation officer assigned to the case has sufficient time to give adequate attention to a delicate situation.

Disruption of the family in this way is liable to create behaviour difficulties in the children,⁵ to which an ill or convalescent parent may react with violence. It is not suggested that every case of cruelty will show a history of separation in the family. Very detailed study of all cases would be necessary before such a statement could be made. However, experienced probation officers and police representatives believe it may be a factor of crucial importance. Their opinion finds considerable support in case records studied to date.

Yet it must be remembered that inevitable separations occur in many families, and in the majority of cases parents manage to minimise the damage suffered by the children, so that the situation never gets out of

⁵Bowlby, J. (1951) *Maternal Care and Mental Health*, World Health Organisation Monograph Series No. 2, Geneva. (U.K., H.M.S.O.).

hand. It is in families where relationships are already poor, or where there are existing disciplinary and inter-personal problems, that separation can lead to highly disturbed behaviour by the child and to a situation where a parent responds with extreme cruelty.

Separation alone cannot account for cruelty. But a striking similarity exists between cruelty cases, case studies of many children under child welfare care as "not under proper control", and studies of girls serving a sentence of Borstal training. These cases indicate that lack of continuity in the upbringing of a child, or rejection by a parent, especially during the first few years of life, can result in behaviour and learning problems. The statement, "this child was always very difficult to manage", occurs in almost every case record where cruelty is involved.

REPETITION OF CRUEL PUNISHMENT EXPERIENCED BY PARENTS DURING THEIR OWN CHILDHOOD

Because there is a strong tendency for people to use the techniques of upbringing that they learned from their own parents, it is difficult to change a pattern of child-rearing once it is established in a society. Many of the people convicted on cruelty charges themselves suffered much physical ill treatment as children. Case histories illustrate the point:

- (1) "At the age of 10 she was frequently whipped from her bed to gather in the cows."
- (2) "Her childhood was said to have been unhappy and her father was alleged to have had sexual relations with her from the age of 13."
- (3) "There were 16 in the family, and the children were reliably reported to be 'treated like slaves'."
- (4) "Her mother was frequently in hospital, so she was often kept away from school to care for the younger children in the family."

Our community provides parents with a somewhat vague prescription of what it expects of them in their task of bringing up children. There is no longer any one idea of the proper way to raise a family. Physical punishment of children for misdeeds is still very prevalent among New Zealand parents,⁶ and many people still believe that if a little beating will not reform the child, a more severe beating may be more effective.

The right of parents to use physical punishment on their children is acknowledged in law under s. 59 of the Crimes Act 1961:

"Domestic discipline—(1) Every parent or person in the place of a parent, and every schoolmaster, is justified in using force by way of correction towards any child or pupil under his care, if the force used is reasonable in the circumstances.

(2) The reasonableness of the force used is a question of fact."

⁶Ritchie, James and Jane, *Patterns of Child Rearing in New Zealand: Some Preliminary Results*. University of Waikato (mimeo) n.d. 1967.

The difficulty is that while parents have a right to discipline their children reasonably as they think fit, they have a duty not to punish them with unreasonable force. A parent who has little self-control may, in circumstances similar to those outlined in this chapter, find himself, or herself, continuing to punish a child in a quite unreasonable way, almost without conscious volition.

Again, the fact that cruel parents have often themselves been treated cruelly, and the fact that our society condones the physical punishment of children by their parents, are not in themselves an adequate explanation of cruelty to children. But they provide a setting, or climate, in which, if other contributing factors are present, cruelty may occur.

OTHER COMMON FACTORS IN CRUELTY TO CHILDREN

Two factors which commonly increase the strain of coping with a difficult child in an environment where physical punishment is legally and socially permissible are ill-health of one or both parents and sub-normal intelligence.

Case histories often reveal that a mother who ill-treats a child is in poor health and overwhelmed by financial, physical, or emotional difficulties. She may be pregnant, and worried about coping with another child in addition to the existing family. She may have had several children born within a few years and may find it almost impossible to care properly for them all. In either case she will be tired, run down, and likely to vent her unhappiness on one of the children. For example, counsel for the defence said in one case:

"On the day the child was beaten there were mitigating circumstances. There was a young baby in the family that had been teething and crying a lot, and my client, who had not been in the best of health, had lacked sleep."

In another case: "Accused had spent a number of periods in hospital suffering from a tubercular spine. She had made a partial recovery, but her back continued to cause her pain, particularly during menstruation. She had been deserted by her husband and had encountered great financial difficulty in establishing and furnishing a home for her children".

Not all parents who are cruel to their children are of sub-normal intelligence. However, this factor often appears. Extracts from medical reports on women accused of cruelty to children indicate something of the extent of the problem.

(1) "Her powers of comprehension are limited and she is only able to read a very few simple words but can write down a few Maori words. Her knowledge of everyday affairs is extremely limited. While she has been here, her intelligence has been assessed, but in view of her predominantly rural Maori background the results must be viewed with caution. Although she has a full I.Q. of only 64, which places her well within the range of mentally subnormal, she has a performance I.Q. of 79 which lies within the borderline limits. This latter score is relatively

free of cultural bias and is probably the best estimate, but this total picture is compatible with a high grade degree of mental subnormality . . . Although I consider this woman could be made the subject of a reception order as a mentally subnormal person if the Court so desires, I do feel that under certain circumstances she could live outside hospital within the limits of the law".

(2) "Education—reached standard 6 at 15 years of age".

(3) "She can be placed in the class between dull normal and borderline feeble-minded categories. She reached standard 4 at 12 years when she left school due to family ties. Her conversation and general attitude indicate that, if given the opportunity, she could have advanced considerably beyond this level".

(4) "She scored on a full scale W.A.I.S. verbal I.Q. 79, performance I.Q. 65, full scale I.Q. 71. While such a score is compatible with certifiable mental deficiency, the hospital psychologist feels that in view of her cultural background it would be more accurate to regard her as a person of very dull normal intelligence, a so-called borderline case. . . . She married early, and each of her four pregnancies was complicated throughout by mild symptoms of depression, sleeplessness, and purposeless, and uncontrollable nightly bouts of weeping. A single thought disorder, such as hatred for one child, was not sufficient to render her certifiably insane at the time of the event. Nevertheless, she was not fully responsible for her act in that while knowing its nature, she did not at the time appreciate the quality, that is, the amount of the injury she was inflicting. Her ability to measure or estimate anything, even the strength of a blow, has always been very poor, due not only to her low intelligence but also to her low emotional control".

In a recent study made in London, it was found that 19 out of 29 mothers were of low or very low intelligence.⁷

When low intelligence is accompanied by ignorance about normal child development and child-rearing technique, and when there are other strain-producing factors, the possibility of abuse is very real.

PRECIPITANTS OF CRUELTY

Conflict areas occur when difficulty is encountered by the parent while training the child in fields where success as a parent is often judged. For example, if the child is a poor eater, difficulty occurs when the parent tries to make it eat. Toilet training offers the child one of his few "weapons" against a parent; he can cause considerable extra work and anxiety merely by refusing to conform to expectations. Community competition in the matter of toilet training can only add to the anxiety with which a mother strives to make her child succeed. Ignorance is thus as much to blame in some cases of neglect and cruelty as is malicious intent. While it seems inexplicable in these days of universal

⁷Cameron, J. M., Johnson, H. R. M., and Camps, F. E., *The Battered Child Syndrome*. Medicine, Science, and the Law, Vol. 6, No. 1, Jan. 1966.

education, some parents still harbour erroneous ideas about nutrition and hygiene, and regard early achievement as a battle to be won for personal convenience and for status.

One couple on record regularly thrashed a child, first in an attempt to teach him to crawl and then to get him to walk. This case indicates an unusual degree of ignorance. Even if the stated reason was only an excuse to cover callous cruelty, it is inconceivable that anyone with reasonable intelligence, or even any experience of children, would have thought of advancing it as an excuse.

Women in penal institutions as a result of cruelty charges are often found to be ignorant of simple basic techniques of child rearing. For such women, classes in child care can be the most valuable part of a prison sentence. One would wish that such classes were automatically available to everyone convicted of cruelty to a child. A mothercraft course held in Arohata in 1966 is a useful beginning in an important work.

Ignorance about birth control is also quite often found among parents who beat their children. Ignorance results in the birth of unwanted children who may suffer cruelty or neglect. In the case of the couple who thrashed a child to teach it to walk, three children had been born within three years. Neither the husband nor the wife had any idea how to avoid the birth of another child, apart from total abstinence from sexual intercourse. The children became scapegoats of the resultant frustration.

Such ignorance is one factor in the marital relationship that should be avoidable in the present day. Unfortunately, there are other strains less easily reckoned with—financial problems, poor housing, marital discord. In some cases these have resulted in the break-up of the marriage before a child suffered physically. But in other cases the child became a scapegoat as mother and father tried to live together in constant conflict.

THE SCAPEGOAT

When a person is placed in an intolerable situation and has not been able to find any acceptable solution to his, or her, difficulties, it is a very common reaction—if not a very rational one—to find a scapegoat on whom to discharge all the bitter, helpless feelings that have accumulated. The scapegoat is nearly always innocent of responsibility for the situation, but his characteristics are distorted in the mind of the person concerned so that he appears blameworthy. The scapegoat is usually helpless, as well as innocent, for obviously it is dangerous to attack a person in a position to defend himself. A child is often in this position, and may be used in this way, though cases of extreme physical cruelty are rare.⁸

⁸See Shapiro, Pauline, *Children as Scapegoats*, in *The Anti-social Child in Care*. Ann. Review of the Residential Child Care Association, Vol. 14, 1966, p. 15.

The child chosen as a scapegoat is very often different in some way from the other children in the family. It may, perhaps, be an illegitimate child, brought up by foster parents, and then reclaimed by the mother after she has married and is in a position to make a home for it. She may have had a very great struggle to achieve a reunion and is naturally upset and disappointed to find that the child, for whom she had sacrificed so much, cries all the time to go back to "Mummy".

Sometimes it may be the child of a relative, placed in the family because no one else is willing to care for it. The fact that the new foster mother is already sufficiently occupied in caring for her own children is conveniently overlooked, and though other members of the family do not hesitate to criticise any mishandling, they do not realise the need for taking effective measures to improve the situation.

Again, the child may belong to the husband, having been born before the current marriage or *de facto* relationship began. He persuades his wife to take this child into her care, but the situation throws strain on everyone concerned, especially if the husband gives any evidence, no matter how slight, of infidelity. The child is then a constant reminder of his previous association, and may come to represent her fears for the future. Just as often, the child may belong to the wife, and become a victim of the husband's doubts and jealousy.

The "scapegoat" may be the child of both parents, but set apart by some factor such as physical deformity, mental retardation, illegitimacy or suspicion of illegitimacy, or jealousy arising from domination of the family by relatives. The child's own abnormality may produce extreme stress in a parent or foster parent.

Gibbens and Walker⁹ noted that: "Half the children (studied) showed well marked disturbance which was no doubt caused by the very unstable background and continuous quarrelling of the parents, but nevertheless resulted in thoroughly exasperating behaviour, sometimes suggesting a situation which called for child guidance treatment, rather than purely social measures."

Once a difference in the child has been noted by the parent, the child may be treated differently from other members of the family and, as a result, come to feel rejected and react with behaviour that is increasingly trying. In addition, his normal childish misdemeanours tend to be magnified out of all proportion by the parent.

SUMMARY

Cruelty occurs as a response to a combination of circumstances which place intolerable stress on the adult who has children in his, or her, care. Some of the circumstances are external (e.g., financial pressure, poor housing, overwork); some arise from within the person (e.g., ignorance,

⁹Gibbens, T. C. N., and Walker, A., *Violent Cruelty to Children*. British Journal of Delinquency, Vol. 6, No. 4, 1956.

ill health, low intelligence, psychiatric disorders of varying degrees of severity); and some are due to the child's own abnormality or poor behaviour.

A recent case of manslaughter of a child by his mother indicates how a number of contributory factors can apply. There was evidence of the mother's emotional instability, depression, and irritability over a period of years and on one occasion she had taken an overdose of drugs. Her electroencephalogram showed a very abnormal graph of epileptic type. Her parents had separated when she was five years old, and her childhood had been unhappy.

After leaving school, she worked well for 18 months, but thereafter her occupational history deteriorated. She left home for another city and soon after was before the Court on a charge of shoplifting. She became pregnant at the age of 18 and married the putative father after the birth of the child. The following year another child was born after a very difficult confinement and, on returning home, she had great difficulty in feeding the infant. The feeding situation became one of refusal to eat, crying, and slapping.

She was released on probation for 18 months for ill-treating the four-month old child and seemed genuinely contrite for her action. She said she loved her baby dearly and wanted him returned to her care. Six months later she was convicted and discharged on three charges of theft. There was evidence of some marital discord at this time.

Some months later the accused (again pregnant) was convicted of the manslaughter of her son and sent to prison.

Summing up at the manslaughter trial, the Judge said he realised the accused had had a somewhat unsettled life. . . . She had previously been released on probation for ill-treating the same child and the experience should have warned her against using force on him. . . . Although she suffered periods of depression and irritation, she was nevertheless normal and she could only be sentenced as was appropriate for her case.

"I am informed you are again pregnant. But it is doubtful if you will ever safely be allowed to assume care of your children again," His Honour added.¹⁰

Paradoxically, perhaps, the parent concerned is very fond of the child, and is also anxious to do well as a parent. But this love sometimes co-exists with extreme hatred which the parent cannot consciously acknowledge. Goldston¹¹ says: "They speak of the child as if he were an adult with all the adult's capacity for deliberate, purposeful, and organised behaviour. . . . In the extremity of their ambivalence these parents perceive the child they assault as a hostile, persecutory adult."

When cruelty has occurred, reason alone cannot remedy the situation, for in such cases reason has been abandoned. Those who try to help are faced with a complex social situation, and must act not only to

¹⁰*The Evening Post*, 20 October 1967.

¹¹Goldston, R. *Observations on Children Who Have Been Physically Abused and Their Parents*. *Amer. Journal of Psychiatry* V. 122, No. 4, October 1965.

protect the child, but also to help and teach the parents. The situation is fraught with hazard for everyone involved. One possible outcome is the creation of another delinquent child to add later to the problems of society, if he, or she, survives childhood. There is nearly as great a risk involved in separating the child from his parents, who, however cruel, are still his sole security. These situations, by no means uncommon, demand a rethinking of matters fundamental to the organisation of our society. In particular none of our social services is probably in a position at present to take fully effective action.

The Child Welfare Division acts immediately whenever cases of cruelty are brought to its attention. Similarly, when parents are released on probation, busy probation officers give them as much time as can be spared from their already large case-loads. Reference has already been made to the pioneer course in child care held at Arohata Women's Prison for women sentenced to imprisonment for cruelty or manslaughter.

The problems attendant on the imprisonment of a mother have already been mentioned. In this context it is worth noting that many women suffer such deep grief and remorse when they realise what they have done that they seek punishment in order to expiate their guilt, and to come to terms with themselves before resuming their lives with their families.

But society cannot discharge its responsibility merely by sentencing offending mothers to periods of imprisonment, to be followed by release without further action. Their families have already been damaged by the tragedy they have witnessed and by the period of separation. These mothers will continue to need supervision, counselling, and re-education by skilled field officers with adequate time. The work of public health officials, the Child Welfare Division, and the school is already co-ordinated; in addition, the family will need the help, support, and acceptance of its close community if it is to make a satisfactory recovery. Most important of all is the duty of agencies in contact with young children to notify the Child Welfare Division of their anxiety or concern in particular cases.

In 1966, at the suggestion of Her Excellency, Lady Fergusson, a series of meetings were held in Auckland to investigate the extent of the problem and to see what action could be taken. As a result The Lady Fergusson Family Counselling Service was established in association with the New Zealand Society for the Protection of Home and Family to provide a professional counselling service for the treatment of families under stress. This is a voluntary organisation, dependent on public support for its finances. It is controlled by an Advisory Committee of members of the medical profession with a special interest in child care, and experienced social workers, under the chairmanship of Mr L. G. H. Sinclair, S.M. The object of this service is to prevent cruelty to children, by treating a potentially dangerous situation before it develops into overt cruelty.

Cruelty to children poses problems to which there is no easy solution. One can only hope that the community progressively recognises and reports the tragedies in its midst, and bends all its resources to coping with them with all speed and compassion.

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Chapter 9

ABORTION

The law of New Zealand relating to abortion has altered little in substance since the criminal law was codified in 1893. Sporadic suggestions have been made for its alteration but the pressure has been neither strong nor sustained. However, now that new legislation has been enacted in the United Kingdom, we may well expect further discussion in New Zealand.

The present New Zealand law is contained in sections 182 to 187 of the Crimes Act 1961. The text is as follows:

"Section 182—Killing Unborn Child—(1) Every one is liable to imprisonment for a term not exceeding 14 years who causes the death of any child that has not become a human being in such a manner that he would have been guilty of murder if the child had become a human being.

(2) No one is guilty of any crime who before or during the birth of any child causes its death by means employed in good faith for the preservation of the life of the mother."

"Section 183—Procuring Abortion by Drug or Instrument—(1) Every one is liable to imprisonment for a term not exceeding 14 years who, with intent to procure the miscarriage of any woman or girl, whether she is with child or not—

(a) Unlawfully administers to or causes to be taken by her any poison or any drug or any noxious thing; or

(b) Unlawfully uses on her any instrument.

(2) The woman or girl shall not be charged as a party to an offence against this section."

"Section 184—Procuring Abortion by Other Means—(1) Every one is liable to imprisonment for a term not exceeding 10 years who, with intent to procure the miscarriage of any woman or girl, whether she is with child or not, unlawfully uses on her any means whatsoever, not being means to which section 183 of this Act applies.

(2) The woman or girl shall not be charged as a party to an offence against this section."

"Section 185—*Female Procuring Her Own Miscarriage*—Every woman or girl is liable to imprisonment for a term not exceeding seven years who, with intent to procure miscarriage, whether she is with child or not—

- (a) Unlawfully administers to herself, or permits to be administered to her, any poison or any drug or any noxious thing; or
- (b) Unlawfully uses on herself, or permits to be used on her, any instrument; or
- (c) Unlawfully uses on herself, or permits to be used on her, any other means whatsoever."

"Section 186—*Supplying Means of Procuring Abortion*—Every one is liable to imprisonment for a term not exceeding seven years who unlawfully supplies or procures any poison or any drug or any noxious thing, or any instrument or other thing, whether of a like nature or not, believing that it is intended to be unlawfully used to procure miscarriage."

"Section 187—*Effectiveness of Means Used Immaterial*—The provisions of section 183–186 of this Act shall apply whether or not the poison, drug, thing, instrument, or means administered, taken, used, supplied, or procured was in fact capable of procuring miscarriage."

It is to be noted that the defence available under section 182—the preservation of the mother's life—is not expressly applied to cases under section 183. The precise relation between these sections does not appear to have been elucidated by the Courts. However, the words of section 182 seem better adapted to the killing of the child during or shortly before childbirth, leaving abortion in the more usually understood sense to section 183.

The latter section, however, prohibits only the "unlawful" administration of poisons, drugs, or noxious things and the "unlawful" use of an instrument. In the English case of *R. v. Bourne*¹ the Judge directed the jury that the burden rests on the Crown to prove that the operation was not done in good faith for the purposes only of preserving the life of the mother, and that, if in the opinion of the jury that burden is not discharged, the accused is entitled to a verdict of acquittal. The words "preserving the life of the mother" must be construed in a reasonable sense. They are not limited to the case of saving the mother from violent death; they include the case where continuance of the pregnancy would make her a physical or mental wreck.

In *R. v. Newson and Stungo*², Ashworth, J. stated the rule as follows: "The law about the use of instruments to procure miscarriage is this—such use of an instrument is unlawful unless the use is made in good faith for the purposes of preserving the life or health of the woman. When I say health I mean not only her physical health but also her mental health."

¹[1939] 1 K.B. 687; [1938] 3 All E.R. 615

²(1958) Crim. L.R. 469.

The defence has thus been given a wide meaning in England in these two cases and this interpretation would doubtless be followed by the New Zealand Courts, since the statutory provisions are identical.

Section 182 (2) and the common law defence recognised under section 183 protect doctors who, in the course of their work, have the difficult duty of deciding on a course of action when the life and health of both mother and unborn child cannot be preserved.

THE NEW ENGLISH LAW

Hitherto the English law on criminal abortion has been the same as the New Zealand law. However the Abortion Act 1967 (U.K.) considerably widened the grounds on which abortions may legally be performed in Great Britain. Abortion by a registered medical practitioner is permissible, with certain procedural safeguards, in the following circumstances:

- (a) Where the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman or existing children of her family, greater than if the pregnancy were terminated. In this context account could be taken of the woman's actual or reasonably foreseeable environment.
- (b) Where there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

The opinion of a second medical practitioner is required, and the operation must be carried out in a National Health hospital or other approved place unless the abortion is immediately necessary to save life or prevent grave permanent injury to the woman.

The change in the law enacted in England is considerable. Henceforth any risk that a woman's health will be impaired in any degree will be sufficient, provided the risk is greater than that caused by terminating the pregnancy. Moreover, environment as well as strictly medical considerations will be relevant. Abortion will also be allowed for the first time on purely eugenic grounds—that if the child were born it may be (not *will* be) seriously handicapped by reason of physical or mental abnormalities. The words of the operative sections are general in nature and sense; the test is the opinion held in good faith by the medical practitioners.

The principal object of the British legislation was to reduce the incidence of illegal and dangerous abortions by unqualified persons—what was often referred to as the evil of the back-street abortionist. How far the Act will succeed in its aim must await experience of its operation. There is evidence that in countries such as Sweden, where legal abortion has for many years been permitted on generous but limited grounds, the problem of illegal abortion remains.

It may be noted that in the United States, too, there has been a surge of interest in amending the abortion laws, again prompted principally by the evil of the unqualified abortionist. This has already produced more permissive legislation in Colorado and North Carolina.

NEW ZEALAND INQUIRIES

The last and, as far as is known, the only full-scale inquiry into abortion in New Zealand was made in 1936 when a special committee was appointed to report to the House of Representatives on the incidence of septic abortion, the underlying causes of its occurrence, the best means of combating and preventing its occurrence, and to make recommendations and observations.³

The committee heard evidence from the British Medical Association, the churches, obstetricians and gynaecologists, nurses, and many women's organisations. It distinguished between three types of abortion:

Spontaneous abortions, which occur innocently as the result of some condition of ill health, or, occasionally, as the result of accident. These are entirely a medical problem.

Therapeutic abortions, a very small number of which were lawfully performed by medical practitioners when the mother's life was seriously endangered.

Criminal abortions, where the miscarriage is unlawfully produced by the person herself or by some other person.⁴

The committee found that it was not possible to assess the incidence of abortion with complete accuracy, but that "some definite indication of the frequency is given by the statistics obtained from various hospitals and practices".⁵

Over the period 1927 to 1935 maternal mortality from all causes other than septic abortion dropped from 4.41 to 3.25 per 1,000 live births. During the same period deaths from septic abortion increased from 0.50 to 1.73 (1934) and 0.96 (1935) per 1,000 live births. During the five-year period 1931-1935, 176 women died from sepsis following abortion, and this alone was responsible for one-quarter of the total maternal deaths. Of these women 109 were married, and 338 children were left motherless by their deaths.⁶ The evidence of the medical witnesses before the committee was that sepsis, and death from sepsis particularly, was almost entirely due to illegal interference by instruments.

³Report of the Committee on Inquiry into the Various Aspects of the Problem of Abortion in New Zealand, (1937) App. Jo., H. 31A.

⁴Ibid, p. 4.

⁵Ibid, p. 4.

⁶Ibid, p. 5.

On the basis of the statistics, the committee estimated that the total abortion rate was about 20 per 100 pregnancies, and that of these six to seven were spontaneous abortions.

It was considered that the incidence of criminal abortion was at least 13 in every 100 pregnancies, and that this could be accepted as a conservative estimate of the prevalence of unlawful abortion in New Zealand.

Some of the figures presented suggested a still higher incidence. Accordingly, the committee calculated that for the year ending March 1936, there were probably 6,066 abortions, of which nearly two-thirds (4,000) were criminally induced. The impression of the committee was that this was an underestimate. The finding was that there was a very high incidence of criminal abortion and that it had increased over the years studied.⁷

According to the committee, the main causes for resort to abortion were: economic and domestic hardship; changes in social and moral outlook; pregnancy among the unmarried; and in a small proportion of cases, fear of childbirth.

The committee made a number of recommendations designed to remove or lessen these causes. Among them were recommendations regarding financial, domestic, and obstetrical help by the State, and educational programmes. Any change in the law governing abortion was opposed: "The committee is satisfied that the present interpretation of the law is such that, where the reasons for the operation are valid, the doctor runs no risk of prosecution. The risks of an alteration in the law are great."⁸

The committee stated in conclusion: "Although State aid and legal prohibitions may do something to remove causes and to deter crime, the ultimate issue rests with the attitude and action of the people themselves".⁹

The problem of abortion was again discussed in 1946 by a Select Committee of Parliament, normally referred to as the Dominion Population Committee,¹⁰ which endorsed the conclusions of the 1936 committee. It was noted that a number of the recommendations of the earlier committee had already been put into effect, particularly in the introduction of increased family allowances, maternity benefits, and the advent of a home aid service, and that an educational programme had been undertaken by the Department of Health. On the evidence presented, it was found "difficult to assess the actual extent of this social evil. . . . There was a general agreement that, despite the fact that strenuous endeavours have been made to check this crime, it still continues to be a serious evil".¹¹

⁷Ibid, pp. 4, 5.

⁸Ibid, p. 27.

⁹Ibid, p. 28.

¹⁰1946 App. Jo. I. 17.

¹¹Ibid, p. 120.

The laws against abortion are rarely, if ever, invoked against registered medical practitioners performing therapeutic abortions. Yet the exact meaning of the law and the way it would be applied by New Zealand Courts still contain some measure of uncertainty. Many doctors consider that the law in its present form is adequate to allow any therapeutic abortion that doctors believe necessary to be performed, and that any attempt to define more clearly the conditions under which therapeutic abortion may be performed could possibly have the effect of restricting, rather than widening, the freedom of doctors to make this decision.

On the other hand, Mr D. L. Mathieson, senior lecturer in law at Victoria University of Wellington, has claimed that there is a real need for the law to be clarified. He has stated: "If the law is uncertain, a doctor cannot operate with absolute confidence that he will not be hauled before a Court, if only to be acquitted; conversely, a criminal abortionist may succeed with an unmeritorious legal defence. That the police are likely to enforce the law selectively and with good sense is only a partial answer to this criticism."¹²

While the Bill that subsequently became the Crimes Act 1961 was before the New Zealand Parliament, the New Zealand branch of the British Medical Association made submissions to the Statutes Revision Committee. It considered that any provision to legalise specifically therapeutic abortion was unnecessary. Nor did it see any reason to allow therapeutic abortion for either social or economic reasons, nor in cases of pregnancy resulting from rape or unlawful sexual intercourse. It did seek the clarification of the law by, in effect, writing into the legislation the defence recognised in *Bourne's case*, and suggested the following amendment: "No one is guilty of any crime who, before or during the birth of any child, causes its death by means employed in good faith for the preservation of the life of the mother or to avoid grave injury to the future health of the mother."

This proposed alteration was not accepted by the Statutes Revision Committee and no further official consideration has been given to altering the law on abortion. However, following the passage of the Abortion Act 1967 (U.K.) the Minister of Justice agreed that an expert committee should be set up in New Zealand after the British legislation had been in force for some time.

INCIDENCE OF ABORTION IN NEW ZEALAND

Over recent years the reluctance of juries to convict (noted by both the 1937 and 1946 Committees of Enquiry) may have been reduced. Between 1930 and 1939, 48 percent of those charged with this offence and whose cases came before the Supreme Court were acquitted. From 1940 to 1949 (excluding the years 1942-43 for which no figures are available) 42 percent were acquitted. This contrasts with an acquittal rate of only 23 percent for the five years from 1960 to 1964.

¹²Mathieson, D. L., *The Law: Abortion and Homosexuality*. Address to Royal Society of N.Z. 17 May 1967. Reported in *Evening Post*, Wellington, 18 May 1967.

The figures, it should be stressed, relate to persons tried or sentenced in the Supreme Court and not to cases disposed of in the Magistrates' Court. Since they include cases where the offender pleaded guilty in the lower Court and was sent to the Supreme Court for sentence, they do not give the acquittal rate of cases that were actually tried before a jury. However, if juries remained reluctant to convict it would be reasonable to suppose that most accused persons would elect to be tried by a jury in the hope of an acquittal. The reduction in the acquittal rate does, therefore, appear to represent a real difference in attitude.

Section 185 of the Act, which makes it an offence for a woman to procure her own miscarriage, has seldom been enforced. In the few cases of this type that have come before the New Zealand Courts in recent years the usual sentence has been probation. This may reflect a feeling that the desperation that drives a woman to undergo the risks which attend an illegal abortion is deserving of help rather than punishment.

In the address previously referred to,¹³ Mr Mathieson pointed out that we lacked basic information about abortion in New Zealand, and he appealed for detailed factual and sociological research into the problem. He considered that police statistics relating to abortion in this country were quite unrevealing. They represented surely the top of the iceberg. This is true to some extent of figures for all offending. It must, *a fortiori*, be true of an offence which is attended by moral shibboleths, physical danger, and complete secrecy, and where the "primary victim" is a consenting party. Nevertheless, the figures given represent the only cases in which criminal abortion has been proved to the satisfaction of the Courts. All higher estimates of rates of abortion are to a greater or lesser degree speculative. This fact must be borne in mind in the discussion which follows.

Prosecutions and Numbers Sentenced for Abortion 1954-65¹⁴

Year	Total Charges	Distinct Cases	Persons Males	Convicted and Females	Sentenced Total	
1954	.. 13	*	2	3	5	} Total Charges
1955	.. 1	*	..	2	2	
1956	.. *	8	3	3	6	
1957	.. 10	3	1	2	3	
1958	.. 8	3	2	1	3	
1959	.. 1	1	1	..	1	
1960	.. 20	16	1	4	5	
1961	.. 16	9	5	2	7	
1962	.. 47	16	2	2	4	
1963	.. 12	9	6	3	9	
1964	.. 12	5	2	1	3	
1965	.. 31	13	6	5	11	

*Figures not available.

¹³Supra, p. 294.

¹⁴N.Z. Justice Statistics, Magistrates' and Supreme Courts.

Sentences Imposed for Abortion 1963-65: Distinct Cases

	Number Sentenced	Imprisonment		Fine		Other	
		M.	F.	M.	F.	M.	F.
1963 M.C.	2	..	1	..	1	..	..
S.C.	7	..	4	2	..	..	1
1964 M.C.	2	..	..	..	1	..	1
S.C.	1	..	1	..	..	..	..
1965 M.C.	..	..	..	..	..	..	..
S.C.	11	..	4	3	2	1	..
		10	5	4	1	..	3
		15		5		3	

It will be noted that imprisonment is the most frequent penalty.

As we have seen, the incidence of septic abortion seems to be generally regarded as an indication of the incidence of illegal abortion. The 1936 New Zealand Committee reported that "spontaneous abortion, provided that proper medical care is given, rarely results in sepsis. Therapeutic abortion, done with all safeguards of modern surgical practice, is associated with very little acute sepsis. But criminal abortion is associated with an extremely high sepsis rate."¹⁵

In this context the committee studied the situation revealed in the following table:

Proportion of Maternal Deaths Due to Septic Abortion

Year	Maternal Deaths per 10,000 Live Births	Deaths from Septic Abortion per 10,000 Live Births	Percent Maternal Deaths Due to Septic Abortion
1927	.. 49.1	5.0	10.2
1928	.. 49.3	5.1	10.3
1929	.. 48.2	7.1	14.7
1930	.. 50.8	11.2	22.0
1931	.. 47.7	10.9	22.9
1932	.. 40.8	10.4	25.5
1933	.. 44.4	10.7	24.1
1934	.. 48.5	17.3	35.7
1935	.. 42.1	9.6	22.8

¹⁵(1937) Ap. Jo., H. 31A, p. 7. Even this assumption is not unchallenged. The *Lancet* reported an address to a Family Planning Association conference in April 1966, in which Professor N. Morris emphasised that infection often occurred in spontaneous abortion, and was no evidence of interference. *Abortion in Britain*. Unsigned Annotation. *Lancet* 30 April 1966, p. 970.

The position since 1938 is shown in the following table:¹⁶

Deaths From Puerperal Causes

Year	Total Maternal Mortality	Deaths From Septic Abortion	(Calculated) Percent Maternal Deaths Due to Septic Abortion
1938-40	372	69	18.5
1941-43	316	74	23.4
1944-46	307	45	14.7
1947-49	186	22	11.8
1950-52	135	17	12.6
1953-55	101	12	11.9
1956-58	106	10	9.4
1959-61	85	12	14.1
1962-63	45	4	8.9
(1964) ¹⁷	20	6	30.0
Total		271	

Over the period shown there has been a very marked decrease in maternal mortality and also in mortality due to septic abortion. But deaths from septic abortion still account for a sizeable proportion of all maternal deaths, as is shown perhaps more clearly in the table below. It will be noted that the death rate from abortion is about one-tenth of the rate in the years 1930-35.

Maternal Mortality¹⁸

Year	Maternal Deaths All Causes	Rate per 10,000 Live Births	Maternal Deaths Septic Abortion	Live Births	Abortion Deaths per 10,000 Live Births	Percent Maternal Deaths Due to Septic Abortion
1957	.. 44	7.5	3	58,484	0.51	6.82
1958	.. 31	5.1	2	60,635	0.33	6.45
1959	.. 36	5.8	4	61,869	0.65	11.00
1960	.. 24	3.8	2	62,850	0.32	8.33
1961	.. 25	3.8	6	65,476	0.92	24.00
1962	.. 19	2.9	3	65,127	0.46	15.79
1963	.. 26	4.0	1	64,675	0.15	3.85
1964	.. 20	3.2	6	62,459	0.96	30.00

¹⁶N.Z. Official Year Book, 1965, p. 120.

¹⁷1964 figures obtained from Medical Statistics Branch, Health Department.

¹⁸Annual Reports of Medical Statistics in New Zealand.

The following table shows the same information again in more detail:

*Deaths From Deliveries and Complications of Pregnancy, Childbirth, and the Puerperium*¹⁹

	1958	1959	1960	1961	1962
Europeans—					
Total deaths	22 (4.1)	27 (4.9)	19 (3.4)	19 (3.3)	10 (1.7)
Total excluding deaths from septic abortion ..	21 (3.9)	23 (4.2)	17 (3.1)	13 (2.2)	7 (1.2)
Maoris—					
Total deaths	9 (13.1)	9 (12.6)	5 (6.7)	6 (7.7)	9 (11.7)
Total excluding deaths from septic abortion ..	8 (11.7)	9 (12.6)	5 (6.7)	6 (7.7)	9 (11.7)

It is evident that although Maori women have a higher maternal death rate than European women, there were no deaths due to septic abortion among Maori women during the years 1959–1962. If it is considered that such deaths are an index to the amount of illegal abortion, it would appear that this practice does not occur to any significant extent among Maoris.

A second source of information about the number of abortions occurring is the reports on patients treated in public hospitals. Some proportion of these cases will be spontaneous abortions, the number of which cannot be calculated. No information is available on patients treated in private hospitals.

*Patients Discharged From, or Dying In, Public Hospitals After Treatment for Abortion (All Types)*²⁰ 1957–64

Year	Total Number	Total New Zealand Live Births	Ratio of Hospitalised Abortions to 100 Live Births (Calculated)
1957 ..	4,319	57,452	7.52
1958 ..	4,702	58,873	7.99
1959 ..	4,794	60,628	7.91
1960 ..	5,153	62,276	8.27
1961 ..	5,079	63,566	7.99
1962 ..	4,833	65,895	7.33
1963 ..	4,873	64,675	7.53
1964 ..	4,715	62,459	7.55

The 1937 committee decided that between 6 percent and 7 percent of all pregnancies resulted in spontaneous abortion. In a study of spontaneous foetal deaths under 20 weeks' gestation in New York city, 1952–53, the proportion of spontaneous abortions among white patients was 69.6 per 1,000 live births.²¹

¹⁹Ibid. Figures in brackets give the rate per 10,000 live births.

²⁰Ibid.

²¹Calderone, M. S. (ed.). *Abortion in the United States*. Hoeber-Harper, New York, 1958, p. 74.

Rates of spontaneous abortion may have changed since the time of the two studies quoted above, but, if it is assumed that the rate of spontaneous abortion is still about seven per 100 live births, and that all cases of spontaneous abortion are treated in public hospital, then it is apparent that at least some of the abortions treated in public hospital are not spontaneous.

Detailed hospital returns are shown for 1964.

Patients Discharged from Hospital after Treatment for Abortion, 1964²²

Abortion without mention of sepsis or toxæmia—

Spontaneous or unspecified	4,371
Induced for medical or legal indications	76
Induced for other reasons	2
Other	101

Abortion with sepsis—

Spontaneous or unspecified	158 (+1 death)
Induced for other reasons	2
Other	3

Abortion with toxæmia, without mention of sepsis—

Spontaneous or unspecified	2
----------------------------------	---

Total, all types 4,715 (+1 death)

In 1964 there were 62,459 live births and if it is assumed that spontaneous abortions can be calculated as 7 percent of live births, there would have been 4,372 spontaneous abortions. In this year 4,716 cases of abortion came to public hospital and medical statistics record that 76 of these cases were induced legally for medical reasons. If all cases of spontaneous abortion were treated in public hospital (which is unlikely), a simple calculation shows that 268 of the abortions treated in public hospitals were illegally induced. (A similar calculation for 1963 gives a figure of 327 illegal abortions.) The assumptions implicit in this calculation are such that the estimate is likely to be a minimal one. Nevertheless, it is a more realistic estimate of the frequency of abortion than is the number of people sentenced, though it would not have been physically impossible for the three people sentenced for abortion in 1964 to have performed all these abortions.

Beyond this figure there are an unknown number of people having illegal abortions which are not attended by any adverse physical consequences and which, therefore, do not necessitate hospital treatment.

²²Medical Statistics Report, Pt. 3. Hospital and Selected Morbidity Data 1964, p. 39.

Because of their reluctance to expose themselves to the possibility of having to answer questions, they are unlikely to seek medical attention of any kind.

It would be difficult if not impossible to make any estimate of the number of cases in this category, and while this is the position discussion of trends and of changes in rates is highly speculative.

Such evidence as exists would seem to indicate that rates have dropped considerably since the 1930s and that they are still dropping. Beyond this, the true incidence of abortion remains, and will continue to remain, a mystery.

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Chapter 10

DISHONESTY

Although by no means all dishonesty is punishable by the criminal law, it represents the largest homogeneous category of crime. Criminal dishonesty includes burglary, theft, embezzlement, car conversion, shoplifting, forgery, fraud, and false pretences. Dishonesty that is not an offence can include sharp business practices, the manipulation of stock markets, misrepresentations, and misleading statements, some advertising practices and many other activities that some otherwise reputable people may indulge in. Some of these forms of deceit may do far more harm than the average petty theft, but this chapter is not concerned with them. Conversely, many crimes that are not strictly offences against property have an element of deceitfulness that might in popular language be described as dishonest.

Offences against property form a very large proportion of all crime. The only larger single category is traffic offences, which in 1965 accounted for 81 percent of all Magistrates' Courts convictions. A study of arrest cases in 1965¹ shows that 4,364 convictions were entered for offences against property in the Supreme and Magistrates' Courts out of a total of 14,078 convictions. This means that just under one-third of all convictions following an arrest were for offences against property. Of 3,520 distinct prisoners received during 1965, 1,771 had been convicted of a dishonest act—over 50 percent.²

FACTORS IN DISHONEST BEHAVIOUR

Theories to "explain" dishonesty are legion, and it is all too easy to be dogmatic about factors and causes. It is frequently asserted that certain experiences or types of background tend to produce dishonest behaviour—a childhood deprived of stability and affection, pregnancy or menopause, adolescent rebellion, social deprivation.

While one or more of these factors appears in many cases, they by no means invariably produce delinquency. We all know that many more unhappy children grow up to be reasonably adjusted adults than find satisfaction and comfort in crime; the vast majority of pregnant women simply bear their children and set about rearing their families; most middle-aged women survive the menopause with nothing more

¹All the figures in this paragraph are taken from tables in Justice Statistics 1965.

²This includes persons imprisoned for failing to pay fines.

dramatic than minor medical ills. These situations are not in themselves criminogenic. Their effect is that, if sufficiently stressful, they may exacerbate an existing personality weakness.

Defence lawyers often plead mitigating factors of cultural, social, or economic stress. They may well be relevant. But often, too, greed and opportunity are equally important. It was at one time fashionable to ascribe property offences to poverty among the lower classes—by whom most offences were committed. But our affluent society has seen a rise, rather than a decline, in the rate of property offending, which seems to demolish such a theory.

Affluence itself may precipitate some offending. As the availability of goods increases, so does the desire to possess them, and the opportunity to acquire them illegally. The economic situation varies from one country to another and sometimes dramatically within one country, as *The Challenge of Crime in a Free Society*³ points out. Such inequality is seen in that report as a major factor in crime. But poverty even within more equalitarian societies is a relative concept and reasonably affluent people regarding themselves as "have nots" may resort to crime to possess the same goods as their better-off neighbours. This may be an important factor in the rate of Maori offending in New Zealand.

In an age of change, lack of certainty about morals and ethics leads to unstable relative standards. These are reflected in vacillating discipline, loss of goals, and rebellion against old ideas. Two world wars have accelerated a process of social anomie.⁴ But whatever the underlying factors—personal, social, or cultural—dishonesty, among all crimes, is the commonest expression of a-social or anti-social attitudes.

RATES OF OFFENDING

In 1965, 68,672 "offences against rights of property" were reported to the police.⁵ This category involves every conceivable offence against property, from theft, burglary, conversion, receiving, and robbery to criminal breach of trust, false pretences, extortion, arson, wilful damage, and trespass. It includes such surprising categories as "false alarm fire" [*sic*]. These offences were dealt with as follows:

Number of offences reported	..	68,672	
Number of offences prosecuted	..	17,030	25%
Number found not to be offences	..	3,681	5%
Number dealt with by other means	..	3,039	4%
Number uncleared at end of year	..	44,922	65% ⁶

³*The Challenge of Crime in a Free Society*, a report by the President's Commission on Law Enforcement and Admin. of Justice, U.S. Govt. Printing Office, February 1967.

⁴The term "anomie" is used by this writer to denote a society which is without norms, in which the individual has no fixed standards, and where there is moral and ethical confusion.

⁵Report on the New Zealand Police for the year ended 31 March 1966, Govt. Printer 1966.

⁶The remaining 1 percent unaccounted for results from the "rounding off" of percentages.

Justice Statistics for 1965 show that 8,876 persons were convicted of property offences in 1965. (Although no one can be convicted in the Children's Court, the term is used here to include all those who were dealt with as juveniles and whose cases were not dismissed or withdrawn.) One reason for the difference between the 17,030 prosecutions reported by the police, and the 8,876 convictions reported in Justice Statistics, is that the police figure refers to separate offences, and the Justice Statistics figure refers to separate persons; one person may be responsible for a number of offences. Furthermore, the police use the word "prosecution" in a wider sense than usual. As well as prosecution in the strict legal sense, it may mean action taken to bring the offender before a Court, such as laying an information against him, without the necessity of subsequent court action.

While the number of offences uncleared each year appears to be high, it has to be remembered that offences like theft and burglary are, by their nature, among the most difficult crimes to solve. Victims are seldom able to identify offenders, and few clues are left. In the case of thefts from houses—often during the day while occupants and neighbours are away—no one sees the offender; he leaves no trace; and there is practically nothing on which the police can act.

The results achieved by the New Zealand Police Force stand up well in comparison with experience in other countries. Dr Leon Radzinowicz⁷ has estimated that in 1962 nearly 1,000,000 indictable offences were known to the police in England and Wales, and that they probably represented only 15 percent of the number actually committed. The probability of a criminal being convicted, he considered, was never higher than 50 percent, and in some cases much lower—80 percent of robberies were undetected. By comparison, in New Zealand in 1965, only 48 percent of robberies were uncleared, while in 1964, 54 percent were uncleared.⁸

However, as Radzinowicz points out, reported offences are only part of total offending. We would hesitate to apply to New Zealand Radzinowicz's estimate that reported offending may represent only 15 percent of all crime, without knowing the figures on which the conclusion is based. What is certain is that there is more dishonesty than is ever reported to the police. Thefts within a family or among friends are often not reported; neither are many petty thefts from households. In a time of full employment employers may exercise leniency towards employees who take "perks". A certain amount of pilfering from warehouses or on waterfronts may be accepted as inevitable. The circumstances and attitudes of both victim and culprit, and the nature of the stolen property, are important factors in the decision to lay a complaint.

⁷Radzinowicz, article in *New Statesman*, 1963.

⁸Calculation made from raw figures in Appendix A in Reports on the N.Z. Police, for years ended 31 March 1965 and 1966.

RECIDIVISM

Property offenders include a high proportion of recidivists. A United Kingdom survey indicated that over 80 percent of preventive detainees were offenders against property, as were over 84 percent of other confirmed recidivists.⁹ A New Zealand study of habitual criminals estimated that 90 percent were property offenders.¹⁰ Of the 150 persons sentenced in New Zealand to preventive detention since that sentence was introduced in 1954, 119 (79 percent) were non-sexual offenders, and virtually all of these would be offenders against property. In October 1967, 38 preventive detainees were in custody, 28 (74 percent) of them receiving their sentence for non-sexual offences; these again are almost all property offenders.¹¹

Typically, recidivists begin their offending while still juveniles, and continue to offend with what seems to be near-compulsive persistence. They do not often pursue a rake's progress from petty theft to burglary to major safe-breaking, but tend rather to repeat the same sort of offence time and time again—and also the mistakes that lead to their apprehension. A small number within this group are prone to violence and a few fetishists steal to satisfy a sexual perversion, but by and large they are a very ordinary, often ineffectual group of men and women.

Although a number of writers have tried to classify property offenders in psychiatric terms there is still much speculation, and it seems more appropriate in this work to divide property offenders according to the nature of the offence. It is, of course, a somewhat arbitrary division and, as human nature is so diverse, it may be misleading to talk about The Burglar, The Converter, The Petty Thief, as though each constituted a separate and identifiable class. But provided it is borne in mind that one man or woman may commit a number of separate kinds of property offences in the course of a criminal career, and that motives for offending vary, division according to offence may still yield some pertinent material.

THE ADULT FIRST OFFENDER

Very little has been written about the adult convicted of dishonesty and sentenced to his first prison sentence. By virtue of age, family, and social involvement, and the likelihood that he has had relatively little contact with crime, he presents many problems, not least of which is the need to minimise as far as possible his contact with more experienced criminals.

Approximately 85 percent of adult first offenders do not reoffend. They respond equally well to prison or probation. One may conjecture that their offending was an isolated incident in an otherwise normal life,

⁹Hammond and Chayen, *Persistent Criminals*, P.S. 29, H.M.S.O.

¹⁰MacKenzie, D. F., *Habitual Criminals*, unpublished Dip. Soc. Sci. thesis. 1953.

¹¹The sentence of preventive detention was abolished except for sexual offences by the Criminal Justice Amendment Act 1967.

that the shock of imprisonment was such as to deter any further offending, or, more cynically, that these are the more intelligent offenders, who have learned to avoid apprehension.

These are, and can only be, speculations. In the past, adult first offenders have come and gone through prisons almost unnoticed except as statistics. However, in April, 1964, a special classification centre, (discussed in the concluding chapter of this book) was set up for them at Wi Tako Prison.

ADOLESCENT DISHONESTY

"In all civilised lands criminal statistics show two significant facts: First, there is a marked increase of crime at the age of 12 to 14 years . . . and this increase continues for a number of years. The second fact is that the proportion of juvenile delinquents seems to be everywhere increasing and crime is more and more precocious." This statement was made by G. Stanley Hall¹² in 1904 and is still being said today.

The Hunn Report¹³ referred to the public concern about high rates of juvenile dishonesty in New Zealand. This table gives some indication of juvenile and adult property offences from 1961 to 1965.

Table of Distinct Cases of Property Offences per 10,000 Population in Each Age Group—Males Only

NON-MAORI						
		1961	1962	1963	1964	1965
Age 10-19 C.C.	..	1,723	1,775	1,824	1,843	1,937
M.C.	..	739	786	867	920	965
Total	..	2,462	2,561	2,691	2,763	2,902
Population No.	..	203,400	210,600	281,100	226,100	233,600
Rate/10,000 pop.	..	121.0	121.6	123.4	122.2	124.2
Age 20-54 M.C.	..	1,711	2,074	1,984	2,092	1,701
Population No.	..	495,700	505,700	511,900	519,400	527,100
Rate/10,000 pop.	..	34.5	41.0	38.8	40.3	32.3
MAORI						
Age 10-19 C.C.	..	704	737	872	932	915
M.C.	..	350	328	387	393	387
Total	..	1,054	1,065	1,259	1,325	1,302
Population No.	..	18,970	20,060	21,230	22,480	23,690
Rate/10,000 pop.	..	555.6	530.9	593.0	589.4	549.6
Age 20-54 M.C.	..	586	688	734	725	680
Population No.	..	30,740	31,880	32,710	33,440	34,320
Rate/10,000 pop.	..	190.6	215.8	224.4	216.8	198.1

Children's Court figures above were obtained from Justice Statistics. Detailed Magistrates' Courts figures were supplied by the Department of Statistics, and refer to total distinct cases, arrest cases only. The 1965 Magistrates' Courts figures relate to convictions only, distinct cases, arrest

¹²Hall, G. S., *Adolescence*, London, 1917.

¹³*Review of Maori Affairs*, Govt. Printer, 1962.

cases, and are taken from Justice Statistics 1965. Population figures are Department of Statistics estimates of the mean population for the year ending 31 December.

The figures in the foregoing table indicate that the rate of property offending among Maoris and non-Maoris has remained fairly constant over the years from 1961 to 1965. The proportion of Maori offenders in the 10-19-year-old age group has been about four times as great as that for non-Maoris. In the older age group about six times as many Maoris offended as non-Maoris per 10,000 of relevant population.

The rate of Children's Court appearances for theft, burglary, and receiving per 10,000 of mean population aged 10 to 17 years inclusive was: 1964, 56; 1965, 57; and 1966, 64.¹⁴ In addition, the juvenile crime prevention section of the Police Force and child welfare officers jointly considered 1,875 cases of theft from which prosecution did not result.¹⁵

Property offences account for a large proportion of both Maori and non-Maori juvenile offending. Convictions for property offences make up about half the total convictions for non-Maoris aged 10-19, and about four-fifths of the total convictions for Maoris in the same age group. This accords with the relationship between dishonesty offences and other offences reported by Slater and Pearce¹⁶ in a comparison of juvenile offending by Maoris and by non-Maoris. Their study, together with the addendum published in November 1963, is one of the most detailed yet available. Slater and Pearce used a number of variables to compare Maori juveniles and non-Maori juveniles appearing before the Children's Court in 1960. They found "positive correlations between poor quality of home background and incidence of adverse behaviour characteristics".¹⁷

The evidence of the two studies led them to conclude that an explanation for the higher crime ratio of Maori children can best be formulated, on present evidence, in socio-economic terms; and that the apparent major reason for delinquency both by Maoris and non-Maoris lies in "a faulty background which leads to a lowered efficiency and readiness to face life".

The "faulty background" is not necessarily loss of a parent—the "broken home" to which juvenile delinquency is so often ascribed. It can also be due to inter-personal tensions, arising from any number of

¹⁴Report on the work of the Child Welfare Division for the year ended 31 December 1966, page 13, table A.

¹⁵Ibid, p. 9.

¹⁶Slater, S. W. and Pearce, W. L., *A Limited Study Comparing Maoris and non-Maoris Appearing in the Children's Court in 1960*. Joint Committee on Young Offenders Research Report, June 1963.

¹⁷Slater, S. W. and Pearce, W. L., *An Addendum to the Research Report—A Limited Study Comparing Maoris and non-Maoris appearing in the Children's Court in 1960*. Joint Committee on Young Offenders Research Report, Nov. 1963, p. 8.

causes. To these may be added the greater problems which the Maori child faces in acquiring a non-Maori education,¹⁸ the migration of Maori families to urban areas, which often involves a breakdown in the traditional family structure,¹⁹ and the transition within the family itself from Maori to non-Maori child-rearing practices.¹⁸

COMMERCIAL CRIME

We prefer to use the term commercial crime, rather than white-collar crime, to describe property offences which occur in the course of the offender's lawful occupation, often by a process which betrays the trust invested in him.

Sutherland²⁰ coined the expression "white-collar crime" in 1949, and defined it as "crime committed by a person of respectability and high social status in the course of his occupation". The point he was making was that not all crime is associated with the "social and personal pathologies which accompany poverty". However, his emphasis on the social status of the "white-collar" criminal tends to obscure the basic criterion of this type of offending, namely, its incidence in the course of ordinary occupation. For this reason, and to avoid the connotations of Sutherland's work, the term commercial crime is used to describe the offences covered by sections 222, 223, 224, and 227 (b) of the Crimes Act 1961.

Section 222 of the Act provides that:

"Every one commits theft who, having received any money or valuable security or thing whatsoever on terms requiring him to account for or pay for it, or the proceeds of it, or any part of such proceeds, to any other person, though not requiring him to deliver over in specie the identical money, valuable security, or other thing received, fraudulently converts to his own use or fraudulently omits to account for or pay the same or any part thereof, or to account for or pay such proceeds or any part thereof, which he was required to account for or pay as aforesaid:

Provided that if it is part of the said terms that the money or other thing received, or the proceeds thereof, shall form an item in a debtor and creditor account between the person receiving it and the person to whom he is to account for or pay the same, and that such last-mentioned person shall rely only on the personal liability of the other as his debtor in respect thereof, the proper entry of the amount of the money or proceeds or any part thereof in that account shall be a sufficient accounting for the amount so entered; and in such case no fraudulent conversion of the amount accounted for shall be deemed to have taken place."

¹⁸Watson, John E., *Horizons of Unknown Power; Some Issues of Maori Schooling*, N.Z.C.E.R., 1966.

¹⁹*The Maori in the New Zealand Economy*, Department of Industries and Commerce, January 1967.

²⁰Sutherland, F. H., *White Collar Crime*, 1949, Dryden Press, New York.

Section 223 of the Crimes Act provides that:

"Every one commits theft who, being entrusted, either solely or jointly with any other person, with any power of attorney for the sale, mortgage, pledge, or other disposition of any real or personal property, whether it is capable of being stolen or not, fraudulently sells, mortgages, pledges, or otherwise disposes of the property or any part thereof, or fraudulently converts the proceeds of any sale, mortgage, pledge, or other disposition of the property, or of any part of the property, to some purpose other than that for which he was entrusted with the power of attorney."

In addition, section 224 provides that:

"Every one commits theft who, having received, either solely or jointly with any other person, any money or valuable security, or any power of attorney for the sale of any real or personal property, with a direction that the money or any part thereof, or the proceeds or any part of the proceeds of the security or property, shall be applied to any purpose or paid to any person specified in the direction, in violation of good faith and contrary to the direction, fraudulently applies to any other purpose or pays to any other person the money or any part thereof:

Provided that where the person receiving the money, security, or power of attorney, and the person from whom he receives it, deal with each other on such terms that all money paid to the former would, in the absence of any such direction, be properly treated as an item in a debtor and creditor account between them, this section shall not apply unless the direction is in writing."

Section 227 (b) gives a maximum sentence of 7 years:

"If the object stolen is . . .

(ii) Anything stolen by a clerk or servant which belongs to or is in the possession of his employer."

The scope of commercial wrongdoing is extensive. It includes embezzlement of money from employers and clients, theft of merchandise, padded expense accounts, misrepresentation in advertising, falsification of records, tax evasion, manipulation of stocks and shares, and the floating of paper companies to disguise illegitimate or shady activities. Many such acts are not covered by criminal law; some are breaches only of civil obligations, while others appear to be under no restraint but that of personal conscience. There is a good deal of conduct in the commercial world which most people would regard as shady and immoral, but which stops short of criminality. When detected, it may be dealt with by the professional group concerned. Thus a lawyer who has been guilty of improper, but non-criminal, conduct may be disciplined by the Law Society. Real estate agents, doctors, and registered accountants also have their own professional organisations with investigatory and disciplinary powers.

In many cases where dealings are underhand but not obviously criminal, the offender is a more or less respected business man, whose only apparent motivation is greed. In the case of the smaller and less skilled operator, who "strays" across the borderline into crime, there is often some real or imagined pressing financial need. To the person involved the pressure may appear insurmountable and not to be shared with people who could help; where this happens, moral principles may be pushed aside. Given the opportunity, the technical knowledge, and the financial need to commit some fraudulent act, many people in a variety of occupations manage to persuade themselves that they are only borrowing, and intend to return the money as soon as possible.

Such a man was S.B., a cashier, who was convicted of "theft by failing to account". He began to steal from his employers when he was in debt and in arrears with hire purchase agreements. He continued to steal for two years to augment his salary, taking only small amounts at a time, by altering cashbook entries. In all, he stole £1,370.

Another man, J.L., who was convicted on 99 charges of theft totalling £25,000, was able to defraud the clients of his sharebroking business for several years before he was arrested. J.L. was in many ways a self-made man, who began as a seaman, became a cook, and then a salesman, in which field "high pressure" tactics made him fairly successful. But when he launched out as a sharebroker misguided optimism soon put him into debt. The same optimism led him to gamble heavily, which merely increased his debts. He then began to use for his own purposes money given to him to buy shares, rationalising that he was only borrowing the money and would soon be in a position to repay it. In one instance he bought shares for a client and when, two years later, they began to fall in price, sold them without informing his client, and kept the money. On another occasion he was given £1,500 to invest in shares with two companies. The client was given a receipt, but J.L. used the money himself.

Company frauds are not common in New Zealand, but when they do occur they nearly always involve a substantial loss for innocent, if gullible, investors. It is the magnitude of such offences, rather than their number, which makes them important.

The Companies Act 1955 contains various provisions aimed against frauds in the promotion, formation, and operation of companies, and some of these provisions are applied to unit trusts by the Unit Trusts Act 1960.

During the last 40 years there have been two notable large-scale frauds associated with the promotion or operation of companies in New Zealand that have led to prosecutions—the McArthur case in the early 1930s and the Inter-city case in 1958. It is a significant comment on the inadequacy of our law to deal with the really enterprising and large-scale predator that each case led to special

legislation to enable the extremely tangled skein woven by the perpetrator to be unravelled.²¹

Women have not been involved in any major commercial crime, probably because there are relatively few women in the field of high commerce, but a number have been convicted of fraud or theft for offences committed in the course of employment. As with the men, their erring usually results from the combination of opportunity and real, or imagined necessity. A female cashier can "borrow" money as easily as a man.

In a few cases the offence is at least partly due to folly rather than to criminal intent. One woman, Q.S., was quite incapable of managing the financial side of her business and got her affairs completely muddled. She tried to cope with the mess herself. She faced a total of 29 charges for theft, forgery, and failing to account, involving nearly £4,000. However, she was found guilty on only one charge relating to a cheque for £300 which she had misappropriated.

FALSE PRETENCES

Section 245 of the Crimes Act 1961 defines a false pretence:

"1. 'False representation' means—

- (a) A representation known to the person making it to be false; or
- (b) A representation in the form of a promise which the promiser intends not to perform.

'Representation' means a representation—

- (a) Of a matter of fact, either present or past; or
- (b) About a future event; or
- (c) About an existing intention, opinion, belief, knowledge, or other state of mind.

2. A false pretence is a false representation, either by words or otherwise, made with a fraudulent intent to induce the person to whom it is made to act upon it.

3. Where the representation is in the form of a promise, the existence of an intention not to perform the promise shall not be inferred from the fact alone that the promise is not performed.

4. Exaggerated commendation or depreciation of the quality of anything is not a false pretence unless it is carried out to such an extent as to amount to a fraudulent misrepresentation of fact."

The last subsection defines the limits to which advertisers are able to go in recommending their products. It is, however, circular in nature and says little; what it does do is to leave the door open for a great variety of deceptions of greater or lesser subtlety.

²¹To give a worth-while account of these cases would take far more space than is available. For the McArthur case, see the Reports of the Commission of Inquiry into Company Promotion Methods. 1934-35, App. J., H. 25, H. 25A, H. 25B.

The penalties for false pretences are set out in section 246 of the Crimes Act 1961.

"2. Every one who, with intent to defraud by any false pretence, either directly or through the medium of any contract obtained by false pretence, obtains possession of or title to anything capable of being stolen, or procures anything capable of being stolen to be delivered to any person other than himself, is liable—

- (a) To imprisonment for a term not exceeding seven years if the value of the thing so obtained or procured exceeds the sum of forty dollars:
- (b) To imprisonment for a term not exceeding one year if the value of the thing so obtained or procured exceeds the sum of ten dollars but does not exceed the sum of forty dollars:
- (c) To imprisonment for a term not exceeding three months if the value of the thing so obtained or procured does not exceed the sum of ten dollars."

The best known, but by no means the only type of false pretender, is the confidence man. A.B. is in many ways typical of the pattern to which a number of false pretenders operate. Soon after his arrival in New Zealand he obtained £100 from a female shop assistant, on the pretext that he was buying a milk bar for £2,000 and was £100 short of the total amount. He and the girl were to run the business together. However, he absconded with the money. He was later convicted of false pretences and eventually deported. It came out in evidence that A.B. had a criminal record in both England and the United States, and that nearly all his convictions were for offences of a similar type. Like many confidence men, he had a charming manner and great verbal facility. He was of above average intelligence, but had only a mediocre education, and in his desire to impress and to appear as a man of learning and culture, he indulged in fantasy.

This is a feature often found in confidence men. They seem unable to accept their own limitations, or to channel what abilities they have into lawful and constructive activities. The excessive fantasy in which they indulge serves as compensation for their own inadequacy as much as a method for extracting money from victims.

Playing a role offers an escape from reality, and the role assumed indicates the unrealistic aspirations of the offender. He takes the part of someone with wealth and authority—a businessman, a doctor, a secret service agent, a diplomat. To him a uniform, a title, professional status, or expensive possessions are symbols of the assumed reality. In some cases financial gain is incidental to the main function of giving reality for a time to an imaginative world, even to the extent of telling the same story all the time and, in fact, living off it for years.

X.R. is a case in point. He is an extremely charming and plausible man, of considerable intelligence, capable of acting a role with consummate skill. One role which he perfected and acted for a number of years, was that of a wealthy foreigner touring New Zealand. His

mastery of accent and knowledge of his "native" country (acquired from extensive reading during prison sentences) was such as to convince even genuine visitors from that country that he was one of them. New Zealanders welcomed him as a potential business colleague; on occasion, he even addressed meetings giving his impressions of New Zealand.

X.R. specialised in persuading business people to accept his cheques, and by this means, "bought" and "sold" large expensive cars, lived in luxurious hotels, dressed smartly and attracted the attention of a number of personable women. He was first convicted (of false pretences) at the age of 19. Subsequently, he was convicted nine times in nine years—twice for theft, and on the other occasions for false pretences. He has been sentenced to probation, borstal training, imprisonment, and corrective training. He left trails of bad cheques from one end of the country to the other, and on his last bout of offending, for which he received four years imprisonment, he obtained property to a total value of £2,600 by issuing valueless cheques.

It is thought that X.R. adopts his flamboyant personality to compensate for an unhappy childhood. However, it is now several years since his last release from prison; he has married and has apparently settled down to a normal business life.

The need to escape reality is a potent factor for many false pretenders, and it is reflected in their repeated offending. Such offending is symptomatic of defective traits in their personality structure, and is only rarely caused by some passing phase or circumstances, as the other property offences may be.

X.R. belongs to one of the two major groups into which confidence tricksters are divided. The second group, in which A.B. might be included, offends not to escape reality, but to acquire money, and also satisfaction, from the skill with which they defraud their victims, whom they regard with cynical and callous contempt.

P.Y. was 35 when he was first convicted on 12 charges of false pretences and sentenced to four years imprisonment. He had extracted large amounts of money from businessmen, friends, and clients (he was an insurance salesman) with which he was going to obtain for them new American cars, then in very short supply. One interesting feature that came out at the trial was that while P.Y. admitted debts amounting to £109,000, very few of his victims were willing to make a complaint to the police, and the 12 charges preferred totalled only £11,000. P.Y. persuaded the remainder of his victims, who had been defrauded of a total of £98,000, that it was in their interests for him not to be convicted, as he could then make restitution, some indication of his skill as a confidence man. Many of the victims were prominent men who preferred to lose their money rather than face public exposure of their gullibility.

These offences led to P.Y.'s being declared a bankrupt, and later investigations disclosed that in just over two years, with a total income of £1,700, he had incurred debts to the extent of £147,000. A good deal of his spending was due to fantastic gambling, especially on race-horses. P.Y. himself considered that he had lost £100,000 in betting over two years. The spectacular series of false pretences was, at least in part, an attempt to recoup some of the losses. He received an additional six months imprisonment for bankruptcy offences as a result of the Official Assignee's investigations.

Four years later P.Y. was before the courts again for a similar, but less spectacular, series of offences. The amount involved in these charges was £1,100. Following a three-year sentence of imprisonment, during which he was involved in protracted civil litigation, he settled down and is now apparently a law-abiding citizen.

Most of the men and women convicted of false pretences in New Zealand are much less flamboyant than those previously described. They pass bad cheques for fairly small amounts, with great persistence, and manage to make a modest, but by no means opulent, living. One man, N.M., who died recently at the age of 68, had 28 convictions, 27 of which were for false pretences or theft. The other was for "supplying liquor to natives" in 1919. This man had received every kind of sentence available to the Courts, including preventive detention—to no avail. He rarely passed cheques for more than £15 or £20 at a time, and had all sorts of ingenious devices for obtaining cheque forms and for persuading people to cash them.

He said to a probation officer on one occasion when he was about to be discharged from Mount Eden Prison: "If you see me inside these four grey walls again you can get the biggest boot inside these walls and kick my backside right round the yard". Six weeks later he was back.

On another occasion he was hitch-hiking in Taranaki, and "thumbed" a ride in a police car. He had not gone far when a "wanted" call giving his description and *modus operandi* came over the radio. Quite unperturbed, he turned to the driver and said, "By Jove, that chap must be a bad b. . . .".

The women convicted of false pretences in New Zealand have frequently passed bad cheques, or obtained credit by fraud, usually to buy clothes or furniture. Relatively few of them are in prison. Younger women are often placed on probation and never reoffend. One 17-year-old from a small country town stole her parents' cheque books, and signed their names to a number of cheques. They were accepted by local shops, as the family was well known in the district. The shame of local notoriety resulting from conviction, coupled with the parents' concern, is probably sufficient to keep her from reoffending.

The few women who are persistent false pretenders are well known. One, T.D., has been convicted of false pretences on 17 occasions. Her most recent appearance was on 56 charges of false pretences, for which

she was sentenced to five years imprisonment. This woman persistently passes bad cheques under her own or an assumed name, and opens charge accounts with an assumed name and address. The 56 charges covered property worth £540 and £360 cash.

As has been made clear in the chapter on female offending,²² women who are convicted of serious offences often show personality disorders and poor social adjustment to such a degree as to raise the question whether there is any causal relationship between these factors and their offending. For example, T.D. has had a number of *de facto* relationships since a brief marriage at an early age, has had six or seven children cared for by Child Welfare or relatives, and is described by psychologists as exhibiting gross emotional instability and immaturity. She is not certifiable, but has spent lengthy periods in mental hospital, where intensive individual psychotherapy has hardly penetrated her defensive, antagonistic outlook. Like many female offenders, she is extremely impulsive, acting immediately on any whim or passing fancy.

Many younger women in borstal or prison have succumbed to the temptation offered by shops that have "wear-as-you-pay" systems, or "no deposit, easy terms" schemes for buying furniture and other goods. They have little difficulty in inventing a false name and address, or in passing themselves off as the daughter, or wife, or sister of some well-known citizen. The situation can be altered only by a change in hire purchase regulations, or by more rigorous screening by stores of applicants for credit. Some stores, in quest of turnover, are prepared to take pronounced risks in extending credit facilities.

The most spectacular female false pretender in New Zealand and one of the most colourful criminals at the turn of the century was Amy Bock. The following account is taken from an unpublished thesis:²³

"An Australian by birth, Amy Bock came to New Zealand with an extraordinary story of family tragedies—one member having been killed by aborigines, another by a horse; she herself was the only survivor. She had then decided to leave her ill-fated home for a new country. Another side of the story is that she had left Australia under a cloud for ordering goods in other peoples' names, and there seems to have been general rejoicing when she left.

"She was soon housed in the Industrial School for Girls at Caversham, Dunedin, having been before the Courts for obtaining goods on false pretences. Her activities had already taken her from Auckland to Wellington and Lyttelton.

"While in Caversham she received a letter from 'a loving aunt' with an offer of financial assistance. The letter paid warm tribute to Mr Titchener, the Superintendent of Caversham, and concluded, 'You shall not be left alone in the world if I can help it, my child. Goodbye and may God bless you is the prayer of your loving aunt'. This moving letter

²²Supra.

²³MacKenzie, D. F., *Habitual Criminals*, Dip. Soc. Sci. Thesis, 1953.

was signed M. Merry. Unfortunately for Amy, the letter was found to have been written by herself, so it availed nothing in gaining an early release.

"But, in the event, it mattered little. For when she was released she immediately began to order goods in the name of Mr Titchener, and then proceeded, as was her custom, to give them away in order to gain popularity. She was imprisoned and again released. This time she gained a housekeeping situation with a faked letter of recommendation. One day when her employer was out she borrowed £12 from a moneylender on the security of her employer's piano. Again she found herself in prison.

"And so her life went on. With her plausible tongue and pleasant manners, she 'conned' her way through Oamaru, Christchurch, and Wellington, and paid frequent visits to prison as a result. She then came to Dunedin as Agnes Vallance and once more raised money on her employer's furniture. But when the warrant for her arrest was issued, she had vanished.

"Where had Agnes Vallance gone? The lady had decided that drastic changes had to be made to meet such a dangerous situation. So she decided to change her name, her appearance, and her sex. The result of this metamorphosis was a young man named Percy Redwood, alias Agnes Vallance, alias Amy Bock. Redwood was a person of pleasant address, with a rather high-pitched voice; but he was wealthy and generous, as befitted the nephew of an archbishop. He had been sent south for the sake of his health, which had suffered greatly in the humidity of Auckland.

"During his stay in a boardinghouse in York Place, Dunedin, poor Redwood had the misfortune to lose over £300 which fell from his pocket into the sea while fishing. A kind maiden lady listened to his sad tale and gave him her total savings of £41. With the money, Redwood returned to a boardinghouse near Port Molyneux.

"Life now became more complicated, for Redwood began to make love to the daughter of the house. The girl's mother received a charming letter from Mrs Frances Redwood telling her of Percy's fortune—£1,500 in a farm and £1,500 held in trust to him. Mrs Redwood said in her letter, 'You will not find a more honourable and more lovable man in all our Dominion'. Further letters from Mrs Redwood to Percy's intended mother-in-law described the wedding gifts that were already being received—a dinner service, tea service, a beautiful overmantel, and many others.

"As could be expected a large wedding was arranged, and two clergymen were to officiate. The bridal feast was to be a sumptuous affair, a special carriage was hired from Dunedin, and altogether no expense was to be spared. For the bride's family was widely respected in the district.

"There was great disappointment when Percy's mother wrote to say that she could not come to the wedding, and again when Percy's brother

and sister were also unavoidably prevented from attending. On the very eve of the wedding solicitors arrived claiming £114 from Redwood on behalf of clients to whom he owed the money. The money had been spent on jewellery for the bride. So convinced was the bride's mother of Percy's honesty that she met the claim and advanced a further £100 to him to help him over a difficult period.

"The wedding went on before a large gathering of guests, some very distinguished, and it was late before the rejoicings ended. During the day the bride's parents, however, had become suspicious that all was not as it appeared, and in the evening they took advantage of Percy's drunken state to put him to bed in the groomsmen's room.

"Certain information was laid with the police, and a search was made in Percy's boardinghouse in York Place. There, in a locker, were found articles of women's clothing and some hair clipped from a woman's head.

"Next day Percy was arrested with the suitable words, 'The game's up, Amy. You are Amy Bock. I arrest you on a charge of fraud'.

"Amy Bock was again in trouble in 1909 and was given the dread appellation of habitual criminal. She was released three years later, and it was not until 1931 that she again offended—now an old woman of over 70 with all her early élan gone. But once more the offence was false pretences, to which she pleaded guilty. The Court released Amy on probation to live her remaining years peacefully with her husband. For Amy by now was legally married."

BUGLARY, THEFT, AND CONVERSION

Burglary, theft, and conversion are the most common property offences and are often committed together. In 1965 they represented 81 percent of the total offences reported under the heading of offences against rights of property.²⁴ They also made up 67 percent of the total prosecutions in the same group, although only 20 percent of the thefts, burglaries, and conversions reported were prosecuted.

Section 241 of the Crimes Act 1961 states:

"Every one is guilty of burglary and is liable to imprisonment for a term not exceeding ten years who—

- (a) Breaks and enters any building or ship with intent to commit a crime therein; or
- (b) Breaks out of any building or ship either after committing a crime therein or after having entered with intent to commit a crime therein."

²⁴Report on the New Zealand Police for the year ended 31 March 1966, Appendix A.

Section 220 of the same Act defines theft:

"1. Theft or stealing is the act of fraudulently and without colour of right taking, or fraudulently and without colour of right converting to the use of any person, anything capable of being stolen with intent*—

- (a) To deprive the owner, or any person having any special property or interest therein, permanently of such thing or of such property or interest; or
- (b) To pledge the same or deposit it as security; or
- (c) To part with it under a condition as to its return which the person parting with it may be unable to perform; or
- (d) To deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking or conversion."

The layman is sometimes confused by the distinction between theft and conversion of a vehicle. Conversion is defined by section 228 of the Crimes Act 1961:

"1. Every one is liable to imprisonment for a term not exceeding seven years who unlawfully and without colour of right, but not so as to be guilty of theft, takes or converts to his use or to the use of any other person any of the following things, namely:

- (a) Any motorcar, or any vehicle of any description;
- (b) Any ship;
- (c) Any aircraft;
- (d) Any part of any motorcar, vehicle, ship, or aircraft;
- (e) Any horse, mare, or gelding."

The relevant phrases have been underlined. They refer to an intent permanently to deprive the owner of his property as set out in section 220. Section 228 is, in fact, an added protection for the car owner, and not, as some think, a euphemism for the benefit of the offender, for it makes it an offence to take, use, interfere with, or enter any vehicle without the knowledge and consent of the owner, even if it is intended to return the vehicle to the owner. It would be very difficult in many cases of conversion to prove intent under section 220, but it is relatively easy to obtain a conviction under section 228, where facts alone, and not intent, are relevant.

There are certainly cases where it seems that the offender had an intention sufficient to constitute theft—for example, when he deliberately smashes the car—but prosecutions are rarely brought under section 220, because of the difficulty of proving intent at the time the offence was initiated. Not unnaturally, the Police prefer to use the charge on which they are most likely to obtain a conviction, rather than to risk having a guilty person acquitted through a skilful defence. The penalties are in

*N.B.—Underlining is the writer's.

each case the same—sections 227 (b) and 228 (1) both prescribe a maximum sentence of seven years' imprisonment.

E.K. is typical of the recidivist who is convicted year after year for offences of theft, burglary, and conversion. His offending began when he was 12, and he had trouble making friends because of his low intelligence. He was sent to Otekaike Special School (now Campbell Park) from which he often ran away, stealing food and money while on the run. When he was 15 he converted a car on one of his escapades, and was sent to Levin Training Centre (now Kohitere). A year later he escaped, and when recaptured, was convicted on nine charges of theft, 13 of burglary and theft, and two of car conversion. He was sentenced to borstal training.

Within a year, he had received a second borstal training sentence for escaping and committing three thefts. This pattern was repeated constantly for six years, during which time he was convicted on eight more charges of theft, 14 of burglary and theft, and two of car conversion. When he was eventually released in 1953 he was at liberty for only a few weeks before being convicted on 10 burglary and theft charges, and three car conversion charges. The next year he escaped from prison, committed 36 burglaries and thefts, and converted four cars. Five years later, he was sentenced to preventive detention following conviction on 22 charges of burglary and theft and two of conversion. He escaped from prison in 1963, after serving nearly four years of his sentence and, before recapture, he committed three burglaries and converted two cars. E.K. died in prison two years later.

E.K. came from a most unsatisfactory background—his father was a drunkard who abused and beat his wife and son—and this, together with his low intelligence, made him particularly ill-equipped to cope with normal life. During the few months of his life he spent out of penal institutions he had great difficulty in finding employment, or in making any friendships other than those already formed in prison.

One psychologist reports that he was aware of his inadequacy. Repeated offending may have been to ensure a return to an environment that he knew, and where he was looked after. Another report describes him as a "suspicious, guarded person whose aggressiveness and other anti-social attitudes were a defensive measure".

As in other fields of crime, theories to explain burglary, theft, and conversion abound. On the whole, they amount to much the same thing—that the influence of associates, the standards current in the offender's environment, economic need, and lack of vocational opportunity, deriving from inadequate education, are all likely to be found in association with delinquent behaviour. Whether they are causes or symptoms of a more deepseated malaise is still an unanswered question.

K.P. illustrates the influence of an associate, a break in the family structure and, later on, economic need. His father died when he was 12 and he was sent to live with relatives, where he became involved in delinquent

behaviour with the boy next door. Later that year he was convicted of theft, and put under child welfare supervision. Within a year he was sent to the Levin Training Centre after conviction for theft and burglary. A trial period with foster parents resulted in his being returned to Levin after more Children's Court appearances for theft and burglary. When he was 16 he was released on probation for theft and burglary, and a few months later, he was sentenced to borstal on a charge of conversion. He earned a fairly early release, and it was hoped that he had at last settled down. However, he found it difficult to get employment and lost two jobs through no fault of his own. While a more sophisticated person might have known and used the agencies available for help, K.P. returned to his old solution—theft.

Most thieves and burglars have, on the whole, fairly stereotyped records. Few of them are versatile or accomplished enough to move on successfully from burglary to the more skilled offences, such as safebreaking, nor do they have the opportunity for the commercial crimes described earlier. Thus it is not uncommon to find a man like V.T. who was first before the Courts at the age of 11. During his career he has had 30 convictions for theft and burglary, and since 1946 has spent only four and a half years out of prison.

L.R. is one of the few who has progressed to the "elite" of property offending, and become a proficient safebreaker. His offending began when he was 12, and until he was sentenced to preventive detention 21 years later, he had been convicted on seven charges of theft, five of burglary and theft, one of forgery, one of abduction and carnal knowledge, and one of receiving. On one occasion he burgled a storehouse by breaking open a casement window at the top of a fire escape, climbing an 8 ft partition and forcing open the office door. He pulled the safe away from the wall, and blew it open with gelignite, taking £667. While this man considers himself to be a superior type of criminal and is reputed to be the "master mind" behind a number of crimes, his reputation derives much from comparison with his criminal colleagues, the majority of whom are neither very intelligent nor successful.

It is worth noting that the amount L.R. stole was relatively small, and this is the case with most New Zealand thefts and burglaries. One of the largest amounts ever stolen at one time—some £19,000—is significant because of its rarity. In another country it might not be so uncommon. Most burglars in New Zealand earn little return for the risks they take. The cash they get is usually shared between associates, and some may be paid out to buy silence. If the notes are in large denominations, or if the numbers are known, they may not be able to use the money. If goods are stolen, their value depends on the availability of a receiver.

The more case histories one reads, the more one is struck by the pettiness of many thefts. In the aggregate they constitute a real loss to the community; taken individually they are fairly small. This is true

of the whole range of property offenders, from young women to elderly vagrants. A youth will reach into a shop till while the owner's back is turned and snatch five or ten dollars; a girl will leave a friend's flat, taking some clothes with her; a man will smash a garage window, reach in, and pick up whatever is handy.

Female thieves and burglars differ little from their male counterparts, apart from the fact that they have fewer opportunities for the more spectacular and rewarding crimes. Their thefts are often fairly petty, and involve friends, workmates, flat-mates, employers, or shops. They are less prone to breaking and entering, although female burglars do appear before the Courts from time to time.

One such woman, C.Z., has experienced the disrupted childhood that is so characteristic of female offenders, and is apparently unable to live an ordinary, law-abiding life. She was illegitimate, and her mother died soon after she was born. She was sent from one relative to another, none of whom was able to cope with her truancy, petty theft, and mischief. She was promiscuous from puberty and, eventually, following several Children's Court appearances, she was committed to the care of the Child Welfare Superintendent.

C.Z. was placed in a succession of foster homes, Fareham House, and the Paulina Salvation Army Home. She absconded from all of them, and stole repeatedly. She was 15 when she was first sentenced to borstal training for shoplifting. Six months after release, after drifting aimlessly round the country, she was recalled to borstal. She was pregnant, and the child was subsequently placed with relatives.

Her eight subsequent convictions were for theft, burglary, conversion, assault, and forgery. At the time of her latest exploit, C.Z. was living with a group of young women in a city flat. She and another woman set out on a spree of offending, breaking into several houses, stealing food, money, clothes, and a cheque book, which they used to buy goods and pay bills. A psychiatrist has reported of her: "Her intelligence is certainly within normal limits; there is no evidence of mental illness in her history, and I have no doubt she is a behaviour problem as the result of an emotionally disturbed background, together, perhaps, with the unsettling effect of adolescence. She needs guidance and a firm but kindly discipline rather than psychiatric care". So far, unfortunately, C.Z. has failed to respond to this treatment.

Although most of the offenders described previously have at some time in their careers been convicted of conversion, the evidence is that conversion itself is very much a young man's crime. Some calculations have been made, based on detailed tables for 1960 supplied by the Justice Statistics Branch of the Statistics Department, and on Statistics Department population estimates for the same year. Female convictions and convictions for males aged over 59 were not included, as there were so few of them. The results are shown in the following table:

*Car Conversion by Age Group 1960**

Distinct Cases of Car Conversion, 1960	10-19	Age Group 20-24	25-29
Children's Courts	271		
Magistrates' Courts (arrest cases only)	205	173	91
Percent all cases	64.3	23.4	12.3
Mean population (males)	214,970	77,510	492,410
Rate per 100,000 population ..	221.4	223.2	18.5

*Detailed information supplied by Justice Statistics. Includes total distinct cases heard in Children's Courts and distinct arrest cases heard in Magistrates' Courts, irrespective of outcome of hearing. Males only.

Thus 64 percent of these cases of conversion involved 10-19-year-old boys, and 88 percent involved males below 25 years of age.

A slightly different way of estimating the extent of car conversion is to use figures for convictions (distinct cases) in the Magistrates' and Supreme Courts and to add to them all distinct cases heard in the Children's Courts other than those that were dismissed or withdrawn. This is a more satisfactory method of estimating the total number of car converters, as it excludes cases that were not proven, though the tables from which the figures are taken do not show the ages or race of the offenders.

*Distinct Cases of Car Conversion 1960 and 1964**

	1960	1964
Supreme Court (tried and convicted) ..	4	9
Magistrates' Courts (summary convictions)	422	455
Children's Courts (total distinct cases other than those dismissed or withdrawn)	251	251
Total, all Courts	677	715
Number of licenced motor vehicles ..	762,700	963,871
Mean population males 10-59 ..	784,890	860,070

*New Zealand Justice Statistics (males only).

Thus, over this five year period the number of car conversions increased by 38, that is, 5.6 percent; the number of licenced motor vehicles increased by 201,171 (26.4 percent), and the male population increased by 75,180 (9.6 percent).

In 1960 86.3 per 100,000 males aged 10-59 were convicted of conversion; in 1964 83.1 per 100,000 in this age group were convicted. There was a small decrease in the rate of car conversion, in spite of the greater opportunity afforded by the presence of 26 percent more vehicles in the country.

It is possible that the decline in conversion rates for 10-19 year olds between 1960 and 1964 is related to the theory of "delinquent generations"²⁵ first put forward by Wilkins. He found that a particular generation of children, those born between 1935 and 1942, presents heavy delinquency rates. Moreover, the highest delinquency rates occurred among those children who were four or five years old during some part of the war. The theory was tested in New Zealand by S. W. Slater, J. H. Darwin, and W. L. Pearce²⁶ who found that the theory held true, but that the New Zealanders most prone to delinquency were those who passed through their second and third years during the war. These children would have been in the 10-19 year old group in 1960 but they would have passed from it by 1964, when the lower percentage of conversions was noted.

In this context it is apposite to quote Leslie T. Wilkins commenting on the New Zealand study: "Let us suppose that for no particular reason a given age group begins to attract some publicity as adolescent groups are likely to do. The attention of the law enforcement agencies is then focussed more particularly on the behaviour of this identified minority group. A toughening of attitude on the part of the authorities may then develop, generating in turn a reaction on the part of those "cracked down" upon and amplifying their deviation . . ."²⁷

If this is so, the best thing to do about juvenile delinquency might be stated in one simple four-letter word: "Less".

The statistics of conversion also indicate that it is, more often than might be expected, a Maori's crime. The following graph shows that during the period 1957 to 1964 rates of conviction for car conversion among non-Maori males aged 10-59 (as measured by distinct arrest cases in the Magistrates' Courts) were between 30 and 40 per 100,000 of the population at risk. The corresponding figures for Maori males aged 10-59 were between 200 and 400 per 100,000 over the same period.

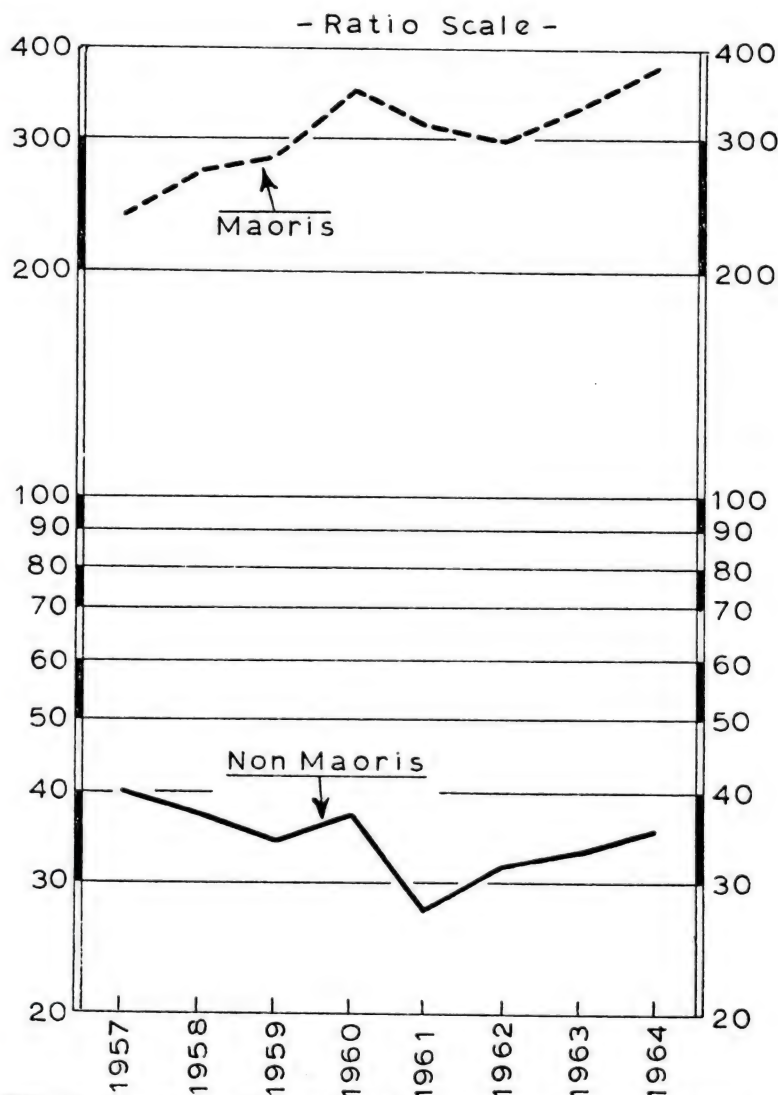
²⁵Wilkins, L. T., *Delinquent Generations*. Home Office Research Report (H.M.S.O.), 1960.

²⁶Slater, S. W., Darwin, J. H., and Pearce, W. L., *Delinquent Generations in N.Z.* Joint Committee on Young Offenders Research Report, 1963.

²⁷Quoted from letter to the Editor. *Journal of Research in Crime and Delinquency*: Vol. 4, No. 1, page 183.

CONVICTIONS FOR CAR CONVERSION IN
MAGISTRATES COURTS 1957 - 1964
ARREST CASES ONLY - DISTINCT CASES
- MALES -

Rate per 100,000 males aged 15- 59*



NOTE: CASES HEARD IN THE CHILDREN'S COURTS ARE NOT INCLUDED IN THIS GRAPH.

* DEPARTMENT OF STATISTICS ESTIMATES OF MEAN ANNUAL POPULATION

It is difficult to explain such a relatively large difference without dangerous or premature generalisation. Joan Metge²⁸ found an informal set of values which she heard praised as "characteristic and proper to Maoris", among which two factors are relevant: "a deliberately happy-go-lucky attitude to time and money"; and "a refusal to worry over the future, or to plan too far ahead".

It is possible that a sense of personal, as distinct from communal, property is not as well developed in young Maoris from rural areas as in Europeans, and that this is a cultural problem.

H.V. is a young Maori, the eighth of 15 children, many of whom had behaviour problems when younger; all are now settled, with the exception of one brother, who is in prison. His parents live in a rural area and are well established and respected in the district. H.V. committed his first offence, theft, when he was 12, and was placed under child welfare supervision. The next year he was again before the Court on five charges of burglary and one of theft amounting to £466. When he was 15 he converted three cars, and was sent to Levin Training Centre. After a few months, he ran away, converted four cars, tried to convert two others, and committed two burglaries. For this he was sentenced to borstal training. In borstal, H.V. was very unsettled; he would not work without supervision. Since release he has worked only intermittently when he needs money.

H.V.'s case indicates an aspect of conversion that has not previously been mentioned—that it offers a means of escape. Another youth, D.A., gives the point emphasis. He is now aged 18, and has been convicted of 50 offences against property, all committed during the last two years. Sixteen of these offences have been conversion. His background is not untypical of many young offenders—his mother died when he was six; he was unable to adjust to a stepmother and ran away to live with his grandmother. This began a pattern of behaviour where situations involving conflict were escaped from as quickly as possible. Although he was happy with his grandmother, he was left unsupervised for long periods while she was at work. When he began having difficulties with his school work he truanted, and soon started converting cars. He was sentenced to borstal training when he was 16 but absconded regularly, always after some trouble, and converted several cars on each occasion. To him, conversion serves as a means of escape, rather than as a joy-riding escapade.

Joy-riding is often the reason why boys from apparently "good, respectable" homes are convicted of conversion. They find an unlocked car with keys in the ignition and on impulse, perhaps intending to return the car, go for a ride. Very often they commit no other offence.

As case histories quoted earlier indicate, most adults convicted of conversion also commit other offences, such as burglary and theft.

²⁸Metge, J., *A New Maori Migration: Rural and Urban Relations in Northern New Zealand*. Melbourne University Press 1964, University of London Athlone Press, 1964.

Occasionally, however, there are confirmed converters like W.W. whose actions seem to have an almost compulsive quality. Over a period of 18 years he has been convicted on 32 charges of conversion, and has probably converted many more cars. As a youth, he told a probation officer that he preferred to live by his wits and had no desire to lead an honest life. He is described in a probation report as "a poor type, without much ambition or drive, intellectually dull, but obsessed with cars". Yet he has never owned a car, nor acquired a driver's licence. A psychologist notes that he has little insight into himself and is "completely insensitive, callous, and unrepentant—possibly a psychopathic personality". During the last 22 years he has spent only 15 months out of prison.

RECEIVING

To a thief, the value of stolen goods depends on the availability of a receiver. There is no doubt that the receiver, or "fence", is as much a threat to a property-owning society as a thief or a burglar, for the latter depends on him to dispose of the stolen goods for some profit. If there were no "fence", it would rarely be worth while stealing anything of value other than money, because of the difficulty in disposing of the article without arousing suspicion.

Receiving is often regarded by the Courts as the more serious crime because of the incentive it gives to property offenders. The receiver is always in the background, buying stolen property and disposing of it as quickly as possible—and it is usually difficult to collect the evidence which will convict him.

Section 258 of the Crimes Act 1961, describes receiving—

"(1) Every one who receives anything obtained by any crime, or by any act wherever committed which, if committed in New Zealand, would constitute a crime, knowing that thing to have been dishonestly obtained, is liable—

- (a) To imprisonment for a term not exceeding seven years if the value of the thing so received exceeds the sum of forty dollars:
- (b) To imprisonment for a term not exceeding one year if the value of the thing so received exceeds the sum of ten dollars and does not exceed the sum of forty dollars:
- (c) To imprisonment for a term not exceeding three months if the value of the thing so received does not exceed the sum of ten dollars.

(2) Except as provided in subsection (3) of this section, where anyone is being proceeded against for an offence against this section, the following matters may be given in evidence to prove guilty knowledge, that is to say—

- (a) The fact that other property obtained by means of any such crime or act as aforesaid was in the possession of the accused within the period of twelve months before the date on which he was first charged with the offence for which he is being tried;
- (b) The fact that, within the period of five years before the date on which he was first charged with the offence for which he is being tried, he was convicted of the crime of receiving:

Provided that the last-mentioned fact may not be proved unless there has been given to the accused, either before or after an indictment has been presented, seven days notice in writing of the intention to prove the previous conviction, nor until evidence has been given that the property in respect of which the accused is being tried was in his possession.

(3) Nothing in subsection (2) of this section shall apply in any case where the accused is at the same time being tried on a charge of any offence other than receiving."

Subsection (2) appears to be unique in criminal law, in that it makes evidence concerning a previous conviction admissible evidence. This, in itself, illustrates the extreme difficulty in obtaining a conviction for receiving; the obvious and often unassailable defence is for the accused simply to say that he did not know the goods were stolen.

It might be noted, in passing, that the 1961 Crimes Act considerably modified the provisions of the 1908 Crimes Act relating to evidence admissible to prove guilt on a charge of receiving. For example, it can now be given in evidence only that the defendant has within the previous five years been convicted of receiving. Previously, it was possible to introduce evidence relating to other convictions.

T.U. was a receiver for at least five years before he was convicted on 10 charges of receiving stolen property—a mere fraction of the quantity of stolen property he had handled. Amongst the stolen property found in his house when he was arrested were 15 shirts, six electric heaters, 265 dresses, hardware, 11 singlets, tins of paint, a roll of carpet, and a roll of linoleum. His house was almost entirely furnished with stolen goods—furniture, crockery, floor coverings, kitchen utensils, clothing, and a larder filled with quantities of canned food.

T.U. told the police he had never stolen anything himself but had always paid a price for the goods—often a very low one. Many of the articles which he received were useless to himself, and did not have much resale value. A carton of sewing machine needles which a burglar had mistaken for a sewing machine was a typical example.

T.U. received goods from all types of property offenders—thieves, burglars, smugglers—as well as from men working in warehouses, with several of whom he had a standing arrangement. He made his contacts for both buying and selling in the bar of a city hotel which he visited frequently, and where he was known only by a nickname. In one

transaction, a warehouse worker came up to him in the bar and told him he had a crate of sardines to sell for £2. T.U. approached a man he knew to be a grocer and offered him the sardines for £5. The grocer then collected the crate from the warehouse worker's truck. T.U. had not handled the goods at all, but his importance lay in his knowledge of who to buy from, and to whom to sell.

Because property offenders depend so much on receivers, those who operate as "fences" are much in demand, and their reputation spreads quickly. A probation officer got the impression that T.U. was proud of his reputation, and did not consider his activities criminal. He countered recriminations with: "If you were offered a cheap buy, wouldn't you take it?" His wife remained loyal throughout his lengthy prison sentence and maintained that she had no knowledge of his criminal activities.

SHOPLIFTING

Shoplifting is not a separate offence under the Crimes Act. It comes under theft, in section 220 of the Crimes Act 1961, with maximum penalties²⁹ of seven years' imprisonment for the theft of anything exceeding \$40 in value, one year's imprisonment for the theft of anything valued from \$10 to \$40 and three months' imprisonment for anything valued at less than \$10.

Two surveys carried out in Wellington provide information about detected shoplifting and the attitudes adopted towards it, the estimated costs to firms and the treatment of offenders.

In 1965 the Research Unit of the Joint Committee on Young Offenders prepared a survey of 10 chain stores, four department stores, and one bookshop. The project was restricted to shoplifters aged 17 years or less, detected over a specified period. The findings of this survey were:

- (a) Managers varied greatly in their awareness of, and concern about, shoplifting. One manager believed that the losses incurred were negligible. Several managers thought that losses were considerable but were resigned to accepting them as inevitable. Chain stores, considering the problem to be relatively serious, followed a policy of continuous vigilance. Two department store managers regarded shoplifting as a major problem.
- (b) Managers of chain stores thought that most juvenile shoplifters caught in their stores were between eight and 14 years of age, but one department store manager said that a fair proportion of the juvenile shoplifters were girls in the 15-20 age group.
- (c) The items most commonly stolen by young shoplifters were pens, toys, parts of sporting goods, and confectionery. Girls stole clothes, cosmetics, and jewellery.

²⁹Crimes Act 1961, s. 227.

- (d) Most managers agreed that the juveniles came from a wide diversity of backgrounds. Several managers thought that much shoplifting was the result of "dares" and other peer group pressures and did not imply serious criminal tendencies. Groups of children from the same school would sometimes give rise to a run of shoplifting. Such groups were motivated not by a desire for the property stolen, but to gain prestige in the group, and to avoid appearing to be "chicken".
- (e) While one manager said that he invariably informed the police when a young person was caught shoplifting, the others pursued a more flexible policy, their main concern being to choose the course of action most beneficial to the child.

The shoplifters who appeared in this sample were all detected between October 1965 and March 1966. Contrary to estimates, the number notified to the Research Unit was only 35. Consequently, no sophisticated statistical treatment of the data was attempted and in the main the results were simply tabulated.

Twenty-five were males and 10 were females, their ages ranging from six to 17 with a mean age of 11.6 years. Two should have been at school and 24 were caught out of school hours. The mean value of goods stolen per shoplifter was \$2.80 and consisted of the items already listed.

Sixteen were warned by the manager; in 13 cases parents were informed by the store. The police were informed in 16 cases. In no instance was a headmaster informed. One boy was dismissed from his position in the store from which he was stealing. The average age of those referred to the police was 13.2 years, and the average age of those not referred 10.3 years.³⁰

About two years after the juvenile study—in November 1967—a less formal survey was made in Wellington by the Justice Department. This consisted of a series of interviews with executives of five large departmental stores and one chain store, and discussion with store detectives and security agents. The survey was not limited to any particular age group.

It was immediately apparent that some attitudes had changed greatly since the juvenile study. One executive described shoplifting as having reached "alarming" proportions, and everyone interviewed agreed that shoplifting had become a major problem. Their views coincided with a statement of the president of the New Zealand Retailers' Federation who said that a major effort was to be made during the few weeks before Christmas to combat shoplifting. The matter had been discussed with the police, and crime prevention officers were informed of the federation's view. Thousands of dollars worth of goods, it was stated, were stolen by shoplifters each year. There was no longer room for

³⁰Slater, S. W. and Jensen, J., *Study of Juvenile Shoplifting*, (unpublished) 1966.

leniency when dealing with shoplifters, if indeed there ever was, and the apprehension of shoplifters would result in prosecution.³¹

On the day this statement was made in Wellington the chairman of a large Auckland departmental store addressed the annual meeting of shareholders. In his report he said that shoplifting had been a problem during the year, and throughout the year the company handed to the police an average of three detected shoplifters every two days.³² The manager of a large chain store estimated a 2.53 percent loss in a total turnover of \$37 million, though not all of this loss would be due to shoplifting.

In 1966 a security service was established in Wellington to help stores to combat shoplifting. In its first annual report, the service said that during the year August 1966 to July 1967 324 adult offenders appeared in the Wellington Magistrate's Court charged with the offence. A small percentage of those accused were charged with multiple offences—thefts from more than one store. Two hundred and fourteen of the offenders were females. The value of property concerned in the charges amounted to about \$4,000. The report mentioned recent American and Australian estimates that only one in 10 shoplifters is apprehended and for only one in five of the offences committed.

The report continued: "No accurate figures are available which would show the extent of juvenile shoplifting; however, general observations show that it is minor in comparison with that of adult crime. Approximately 67 children of both sexes have been dealt with on shoplifting charges by the Children's Court since the start of 1967".³³

Every executive and security officer differentiated between impulsive shoplifting usually carried out by a lone child or adult and deliberately planned stealing by groups. But regardless of the type of the offence or the age of the offender, all cases of shoplifting are automatically reported to the police by at least six large firms. Most of them made particular mention of groups of high school children (particularly girls) who make forays on city stores. In one case 15 girls from a local college were caught in an afternoon, shoplifting in one store.

A domestic survey conducted by a store manager over the three-year period 1958 to 1961 gave the age and sex of 473 shoplifters apprehended in branches of a chain store throughout New Zealand. The figures were:

Age	Males	Females
15-18 ..	98	128
19-20 ..	30	61
21 and over ..	40	116
	<hr/>	<hr/>
Total	168	305

³¹The *Evening Post*, 14 November 1967.

³²The *Dominion*, 15 November 1967.

³³The Safeguard Security Service, Annual Report, January-July 1967.

The ratio of the sexes is almost exactly the same in this survey as that given in the security report and bears out the views expressed in all interviews.

The rate of shoplifting among staff is considered to be high—some executives agreed that 10 percent of all staff are suspect—some for shoplifting, some for entering false amounts on registers, or giving articles to friends at cheap rates or for nothing.

Theories as to the motivation of shoplifting varied widely. Poverty (except amongst degenerate alcoholic males) was discounted as a factor. Impulsiveness, excitement, "daring", showing-off, and calculated acquisitiveness were all given as possible motives to the Justice Department investigator. Psychiatric disorder related to pregnancy, menstruation, and menopause was discounted by business executives in this survey.

Most felt that heavier penalties should be imposed—in many cases the fine imposed was felt to be quite inadequate as a deterrent—that search warrants for homes should be more widely used, and that persistent cases should be dealt with by imprisonment. It is clear from all interviews that the firms represented had hardened considerably in recent years in their attitude to shoplifters and that every possible precaution will be taken to prevent shoplifting and to apprehend the offender. Whether such measures will offset the growth in population, the greater accessibility of goods, and the enticement of advertising, remains to be seen.

The majority of women who appear before the courts have not been convicted previously, and are rarely convicted a second time. Gibbens and Prince,³⁴ in a study of shoplifters convicted in 1959-60 in three London courts, found that 80 percent of shoplifters had no previous convictions of any kind. Many of the shoplifters showed signs of general social maladjustment. Often, however, these were adolescent symptoms which disappeared with maturity. The age distribution of the women, taken decade by decade, showed a peak at the 51-60 age group, followed by the 41-50 group, then the 21-30 group, the under-20, and finally the 31-40 group. It seems possible that a reliable study made in a social setting similar to our own, and based on a similar retail system, should be reasonably applicable to New Zealand.

Why do so many apparently "respectable" people steal in this way? What motivates them, apart from greed? The offender is often found to be suffering from some kind of stress. But though every one experiences stress in varying degree, only a minority shoplift. The typical shoplifter often shows no gross nervous disorder, overt marital discord, low intelligence, or significant financial difficulty. It seems that many people with stresses tend to find other releases, although a few are found among recidivist shoplifters, as for example R.C. whose case history is given below. Gibbens and Prince³⁵ maintain that a

³⁴Gibbens, T. C. N. and Prince, Joyce, *Shoplifting*; I.S.T.D. 1962.

³⁵*Ibid.*

sense of inferiority, whatever its cause, is a common factor among shoplifters. Fabian L. Rouke³⁶ quotes the case of a girl who shoplifted for revenge, to "get even" with her parents by disgracing the family name.

While organic factors may be present, it is difficult to establish any connection between shoplifting and menstruation, menopause, or pregnancy. The absence of pregnancy or the loss of a child may as often be a source of disturbance. If the shoplifting age distribution reaches a peak at about the menopausal time of life, this may be attributed to psychological and sociological problems associated with middle-age as well as to any physiological cause. Depression is a significant factor, particularly with middle-aged women. An act of shoplifting by a severely depressed woman may be a cry for help, just as in some cases of attempted suicide. Similarly, it may be to attract the attention of a negligent husband or a forgetful family. In such a case little attempt is made to conceal the theft—there is almost an invitation to apprehension.

To another person, shoplifting may provide some excitement in an otherwise dull life. This is particularly true of the woman who steals frivolous, unnecessary goods, or cheap articles which she can well afford. Yet another may persuade herself that she is helping the family budget and being a particularly frugal housewife.

Real economic hardship is not often apparent among shoplifters. Very often they have more than enough money to pay for the stolen goods and may offer to do so as soon as they are apprehended. One apparently genuine case of economic hardship concerned a woman who stole food from a self-service grocery. Her husband was in prison, and she had three children under the age of five. Her income was \$28 per week, of which \$14 went on rent. She received a small fine as a sentence and was referred to the Social Security Department for advice.

Another woman, R.C., who could well be described as a professional shoplifter, saw this as a solution to her financial problems. She had had a most disturbed childhood, including lengthy periods in child welfare institutions and in borstal. Her husband was a weak, ineffectual man who had been imprisoned several times, who was often out of work, who attempted suicide when depressed, and who spent several periods in mental hospital. She had to feed, clothe, and house 11 children. R.C. had been convicted of shoplifting on a number of occasions but had been fined or released on probation because of her circumstances. Eventually she was convicted of offences involving over £1,000 worth of goods and sentenced to prison. It is reported that when she was in prison on remand, an officer taking her to court remarked on how smartly she was dressed. She replied proudly: "And every stitch of it stolen."

These are exceptional cases. The very low rate of recidivism among shoplifters indicates that all too often they are normally honest people

³⁶Rouke, F. H., *Shoplifting, its Symbolic Motivation*, N.P.P.A. Journal, Jan, 1957. Vol. 3, No. 1, p. 57.

who have succumbed to temptation. They may have stolen often before their apprehension but, once caught, they are sufficiently chastened to control themselves in future.

SENTENCING THE DISHONEST

Sentencing in occasional or isolated cases of dishonesty has changed considerably since the turn of the century. The shift is in the direction of treating such offenders outside institutions. Progressively more use is being made of fines, probation, and periodic detention; every effort is now made to keep the offender within the community³⁷ rather than to sentence him to imprisonment.

In recent years detention in a detention centre (for the young offender aged 15-20) and periodic detention (for young offenders and certain adult offenders) have been added to the sentences available to the Courts. In all these categories the dishonest offender has been a prominent statistic; the frequent changes in sentencing tend to illustrate the dissatisfaction of penal administrators with the offender's treatment and its effect.

The effectiveness of treatment could be most appropriately measured by its effect on offenders against property. Recidivism is more common in this field of crime than in any other—apart from drunkenness and related offences.

Thieves and burglars seem to be reconvicted more often than any other group of offenders. As previously mentioned, one study found that 90 percent of New Zealand's habitual criminals were guilty of dishonesty.³⁸ These persons had an average of over 30 convictions at the point of declaration as an habitual criminal. Some, undismayed by an habitual criminal declaration, have since 1956 qualified for, or been sentenced to, preventive detention—a minimum of three years and a maximum of 14 years. A few incorrigibles have reoffended after release from preventive detention and been recalled or resented.

At the other end of a criminal career, about 50 percent of those sentenced to borstal are convicted for offences against property. A follow-up of all borstal releases during the years 1957-63 showed an overall reconviction figure of 77.9 percent. As many as 44.6 percent of post-release offences were against property. A similar study of females released from borstal gave a figure of over 40 percent post-release offences against property.

The failure rate of adults released from a first prison sentence gives a reconviction rate of approximately 15 percent. About one-third of these reconvictions were for property offences. This difference—adult reconviction rates being but a fraction of those for adolescent reconviction—is not surprising. A person who remains honest into

³⁷*Crime and the Community*, N.Z. Dept. of Justice, Govt. Printer, 1964.

³⁸MacKenzie, D. F., *ibid.*

adulthood should respond more favourably to a prison term than a person whose offending began in childhood or adolescence, and whose values are probably more precariously balanced.

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Chapter 11

PETTY OFFENDING

The term "petty offender" has no legal basis. It is not used in legislation; nor is there any legal distinction between petty and non-petty offences. But it is clear, from a practical point of view, that some crimes are, by their nature, more—or less—serious than others. One can distinguish between different categories of offences on the basis of the degree of harm done to the victim and to society. Thus murder is regarded as more serious than burglary, rape as more serious than ordinary assault, and all of these as more serious than drunkenness, disorderly behaviour, or sleeping under a hedge.

A second category of petty offences comprises minor cases of an offence that permits degrees of seriousness. Thus theft, as it is defined in the Crimes Act, covers all cases of stealing, whether of an apple from a neighbour's tree or £10,000 embezzled by a trusted employee. Where the harm done is small and amounts more to a nuisance than a danger, these offences can properly be regarded as petty. So, too, can merely technical violations of the law. A man can be convicted, for example, of assault on a woman if in accosting her he puts his hand on her arm. The differing degrees of seriousness are reflected in the sentences imposed by the courts but seldom in the maximum penalties prescribed by law.¹

Many of the crimes dealt with separately in this volume could, in some of their manifestations, be regarded as petty. However, the statistical information available, as presented in Justice Statistics and in the annual report of the New Zealand Police, does not permit this sort of analysis. To determine which of thousands of cases of theft or assault should be regarded as serious and which as petty is an impossible task, the more so as the boundary is necessarily subjective.

¹Theft is a partial exception.

For this reason, subsequent discussion is for the most part restricted to offences within the scope of the Police Offences Act, and those offences which are regarded in practice—i.e., the everyday practice of police officers, lawyers, probation officers, and prison officers—as being minor. We have specifically avoided such controversial areas as liquor and gaming laws, Sunday trading, and violations of technical Acts and regulations, as being special topics requiring special consideration. Whenever the term petty offences is used, it should be understood in this sense.

Table A shows the total number of convictions for offences regarded in this context as petty for the years 1940–1964. The figures are taken from Justice Statistics of New Zealand. Shortage of manpower made it impossible to record criminal statistics during the period 1942–1946. It is likely that the figures for 1940 and 1941 are somewhat distorted by war conditions.

Table B presents a more accurate picture than that suggested by the number of convictions. A total of 3,871 convictions for drunkenness in 1964, for example, is a startling figure, and suggests at first glance that we are a nation of heavy drinkers. But when this is related to the total population aged 15 and over,² it appears that there were, in fact, only 221.9 convictions for drunkenness per 100,000 of that population, 22.19 convictions per 10,000, or one person in every 450. This figure is itself an overstatement since petty offenders are frequently repeaters and may each accumulate several convictions in one year. This is particularly true of drunkenness. It must be borne in mind, of course, that the total population aged 15 and over includes a great many people who are not likely to be involved in drinking or in any activity likely to lead to their conviction for the offences described here.

²Because of the way population statistics are tabulated, it has been necessary to calculate in terms of the population aged 15 and over, despite the fact that, in the main, only those aged 17 and over can be convicted in a Magistrate's Court of any of the offences discussed in this chapter. The figures given are thus slightly distorted but not to any significant extent.

TABLE A
Magistrates' Court Total Charges—Summary Convictions 1940-1964 (Male and Female)

Offences	1940	1941	1942-46	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964
Assault	631	535	..	588	558	617	653	700	635	700	772	760	889	870	956	843	979	1,067	1,312	1,401	1,526
Wilful damage and trespass	514	642	..	414	405	426	405	392	365	422	569	536	568	832	908	734	977	852	931	943	846
Drunkenness	5,201	4,529	..	2,322	2,810	3,267	3,555	4,025	4,923	4,556	4,812	4,858	4,950	4,762	3,907	3,674	3,846	3,616	4,361	4,160	3,871
Drunk and disorderly	148	119	..	100	95	129	73	66	99	101	111	111	107	121	82	72	61	53	38	43	55
Indecent, riotous, or offensive conduct	1,748	1,552	..	563	571	572	541	624	534	598	478	503	645	923	778	799	982	1,170	1,914	2,126	2,828
Obscene, threatening, or abusive language	528	448	..	276	290	336	317	403	354	292	381	583	369	490	426	470	584	619	732	793	881
Assault, resist., or obstruct. Police	166	153	..	102	131	130	139	158	135	105	170	117	146	230	226	225	237	302	313	329	364
Begging	1	..	..	2	..	1	2	1	..	..	1	..	..	..	1	1	2	1	..	..	1
Other vagrancy	421	281	..	446	382	428	448	429	526	605	562	568	775	766	735	664	599	597	733	843	792
Fortune telling	2	2	..	..	..	5	4	7	2	5	..	2	..	..	..	..	3	2	1	2	1
Casting offensive matter	287	228	..	213	282	292	329	254	280	186	213	193	213	208	171	158	212	187	155	148	149

TABLE B

Raw figures from table A expressed as rates of conviction for a given offence per 100,000 total mean population aged 15 and over.

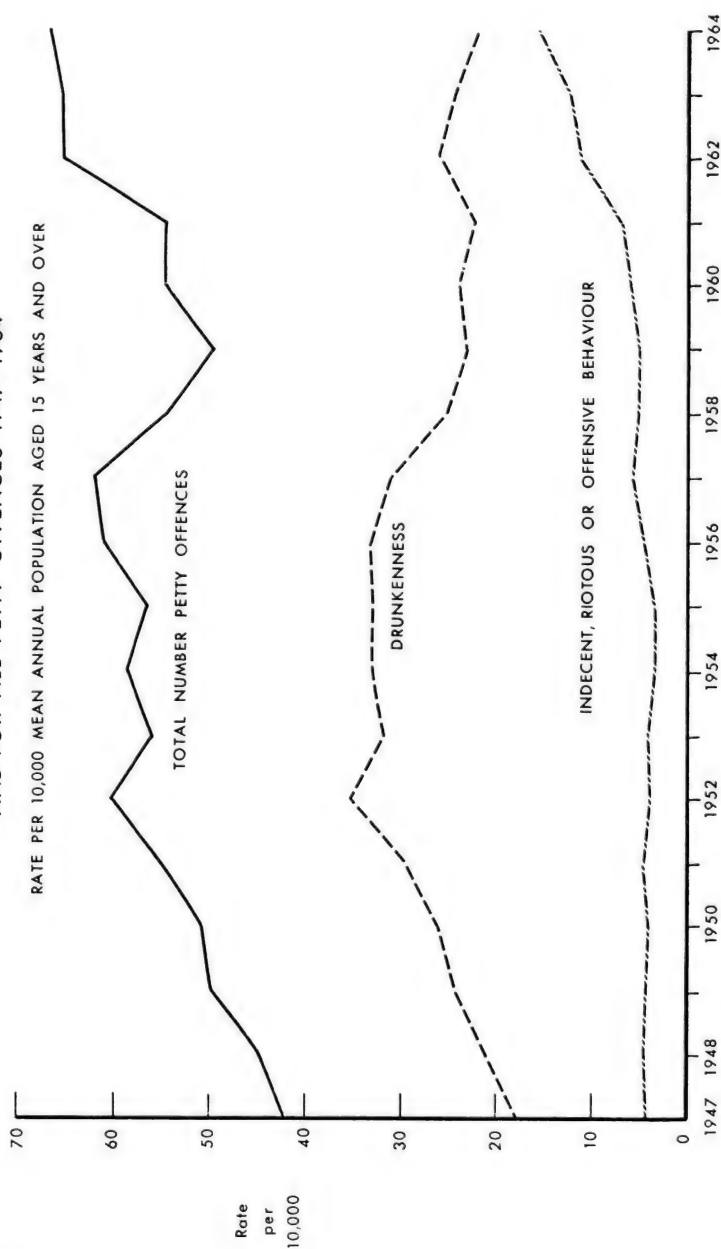
Year	Mean Population Aged 15 and Over	Assault	Wilful Damage and Trespass	Drunkenness	Drunk and Disorderly	Indecent, Riotous, or Offensive Conduct	Obscene, Abusive, or Threatening Language	Assaulting, Resisting, or Obstructing Police	Other Vagrancy	Casting Offensive Matter	Total Number of Convictions for these Offences per 100,000 Pop. Aged 15 and Over
1940..	1,222,274	51.6	42.1	425.5	12.1	143.0	43.2	13.6	34.4	23.5	789.2
1941..	1,211,100	44.2	53.0	374.0	9.8	128.1	37.0	12.6	23.2	18.8	701.3
1942..	..	..	..	..	..	..	..	..	..	..	..
1943..	..	..	..	..	..	..	..	..	..	..	..
1944..	..	..	..	..	..	..	..	..	..	..	..
1945..	..	..	..	..	..	..	..	..	..	..	..
1946..	..	..	..	..	..	..	..	..	..	..	..
1947..	1,320,600	44.5	31.3	175.8	7.6	42.6	20.9	7.7	33.8	16.1	380.5
1948..	1,327,650	42.0	30.5	211.6	7.2	43.0	21.8	9.9	28.8	21.2	416.1
1949..	1,354,950	45.5	31.4	241.1	9.5	42.2	24.8	9.6	31.6	21.6	457.8
1950..	1,355,275	48.2	29.9	262.3	5.3	39.9	23.4	10.2	33.1	24.3	477.1
1951..	1,368,851	51.1	28.6	294.0	4.8	45.6	29.4	11.5	31.3	18.6	515.6
1952..	1,399,037	45.4	26.1	331.9	7.1	38.2	25.3	9.6	37.6	20.0	561.1
1953..	1,424,010	49.2	29.6	319.9	7.1	42.0	20.5	7.4	42.5	13.1	531.6
1954..	1,447,255	53.3	39.3	332.5	7.7	33.0	26.3	11.7	38.8	14.7	557.5
1955..	1,470,355	51.7	36.5	330.4	7.5	34.2	26.0	7.9	38.6	13.1	559.8
1956..	1,490,804	59.4	38.1	332.0	7.2	43.3	24.8	9.8	52.0	14.3	581.0
1957..	1,523,905	57.1	54.6	312.5	7.9	60.6	32.1	15.1	50.3	13.6	603.8
1958..	1,551,955	61.6	58.5	251.7	5.3	50.1	27.4	14.6	47.4	11.0	527.7
1959..	1,575,750	53.5	46.6	233.2	4.6	50.7	29.8	14.3	42.1	10.0	484.8
1960..	1,596,150	61.3	61.2	240.9	3.8	61.5	36.6	14.8	37.5	13.3	531.4
1961..	1,625,730	65.6	52.4	222.4	3.3	72.0	38.1	18.6	36.7	11.5	520.7
1962..	1,667,860	78.7	55.8	261.5	2.3	114.8	43.9	18.8	43.9	9.3	628.9
1963..	1,705,460	82.1	56.2	243.9	2.5	124.7	46.5	19.3	49.4	8.7	632.5
1964..	1,744,645	87.4	48.5	221.9	3.2	162.1	50.6	20.9	45.4	8.5	648.5

TABLE C

Table showing number in each age group convicted of certain petty offences; this number expressed as a ratio per 100,000 mean population of each group. Figures are taken from 1964 *Police Gazette*, with the exception of the drunkenness column, which is taken from Justice Statistics 1964.

Age	Mean Population	Assault	Per 100,000 Population	Assault, Obstruct, Resisting Police	Per 100,000 Population	Obscene Language	Per 100,000 Population	Fighting	Per 100,000 Population	Willful Damage	Per 100,000 Population	Disorderly Behaviour	Per 100,000 Population	Idle and Disorderly	Per 100,000 Population	Drunkenness	Per 100,000 Population	Total No. of Convictions for Petty Offences per 100,000 Mean Population
16-17 ..	49,710	47	94	13	26	58	116	26	52	57	114	108	216	13	26	51	102	746
18-19 ..	42,300	122	288	37	87	111	262	57	135	77	182	179	423	20	47	120	284	1,708
20-24 ..	92,630	299	323	124	134	150	161	126	136	140	151	353	381	28	30	418	451	1,767
25-29 ..	78,500	199	254	40	50	95	121	42	54	59	75	105	134	12	15	277	353	1,056
30-39 ..	163,630	180	110	33	20	117	72	31	19	55	34	80	49	19	12	777	475	791
40-49 ..	149,320	132	88	18	12	60	40	13	9	33	22	24	16	50	33	943	632	852
50-59 ..	127,410	43	34	5	4	27	21	4	3	8	6	14	11	41	32	683	536	647
60-69 ..	81,100	12	15	2	2	9	11	1	1	2	2	4	5	10	12	456	325	373
70+ ..	59,015	1	2	..	..	1	2	..	..	1	2	..	..	..	..	..	..	6

Graph 1 CONVICTIONS FOR DRUNKENNESS, INDECENT, RIOTOUS OR OFFENSIVE CONDUCT,
AND FOR ALL PETTY OFFENCES 1947-1964



Graph I shows the same information in a different form. Convictions for petty offences in 1964 amounted to 30.8 percent of all Magistrates' Court convictions, excluding those for traffic offences.

THE PETTY OFFENDER

Petty offenders do not form an homogeneous group, any more than do murderers, thieves, or sexual perverts. There have been several attempts to classify them according to their offences, or by determining psychological characteristics. The first method is the least satisfactory, for there is no reason to suppose either that particular types of crime are committed by particular types of person or that criminals consistently commit only one type of crime.

The second method, classifying by psychological characteristics, has been used with rather more success by a number of investigators. West³ for example, carried out a research study on habitual offenders, most of whom he considered to be social isolates and whom he divided into three groups—passive inadequate deviants, active aggressive deviants, and non-deviants.

A Home Office Research Unit Report,⁴ dealing with a much larger group of habitual offenders, came to very similar conclusions, indicating a high proportion of the passive inadequate type of offender among persistent offenders. Grygier⁵ has said that all chronic petty offenders have inadequate personalities. He also distinguishes between passive inadequates and aggressive inadequates.

The classifications which West and Grygier use refer to the habitual offender who has established a pattern of persistent and largely petty offending. On the evidence presently available in New Zealand, it is preferred to classify the petty offender on the basis of his social and criminal history, as accidental, occasional, or chronic. This is a practical rather than a psychological orientation, based on an appraisal of the existing situation, rather than on a hypothetical concept.

The **accidental** petty offender is generally a youth and he is likely to be convicted of disorderly behaviour, fighting, obscene language, wilful damage, drunkenness, or petty assault. His offences are largely unpremeditated, spontaneous, and precipitated by liquor, boredom, or a group situation. He has no calculated intent to break the law, and his behaviour is generally more irresponsible than criminal. An older man may similarly be regarded as an accidental petty offender when he commits an uncharacteristic offence, either through carelessness, alcohol, or some precipitating situation. Domestic disputes may result in convic-

³West, D. J., *The Habitual Prisoner*. Cambridge Studies in Criminology. Macmillan, 1963.

⁴Hammond, W. H., and Chayen, Edna, *Persistent Criminals*. H.O.R.U. Report, H.M.S.O., 1963.

⁵Grygier, Tadeusz, *The Chronic Petty Offender: Law enforcement or welfare problem*, 1962.

tion. A person who customarily drinks little may find himself behaving in a foolish and apparently criminal way when he has had "one too many".

The **occasional** petty offender is one who has a number of convictions for minor offences, some of which are likely to be traffic offences. He is distinguished from the accidental offender by the greater number of his offences, by the circumstances in which they are committed, and often by his social history, which is more likely to be that popularly associated with delinquency. The occasional offender may be convicted of several offences during his late teens and twenties. If he continues to offend after he is about 25, it is probable that he will join the ranks of persistent criminals, and move from petty offending to more serious crimes.

The **chronic** petty offender is the best-documented of the three groups, and he has been the subject of most of the research done on petty offenders. His history is one of persistent offending, often combined with a mode of life that is not socially acceptable. Alcoholics and vagrants are prime examples.

There are three main divisions in this class, and for two of them the terms West⁶ has devised seem as suitable as any—the passive inadequates and the aggressive inadequates. The aggressive group are likely to have committed some more serious offences before degenerating into alcoholism and vagrancy. They may have burgled, assaulted, or stolen. Rarely have they been convicted of any serious sexual offences, although the minor sexual aberrations are not uncommon. Those within the passive group, however, are not likely to have committed any offences other than petty ones. The third sub-class among the chronic offenders is drawn from a younger age group leading a vagrant life (e.g., ship-following girls,⁷ and youths who persistently refuse to work). The distinction between these young vagrants and the occasional offenders is often not easy to define.

The graphs in the appendix to this chapter illustrate not only the age range of convictions for petty offences, but also differing trends in sentencing according to age and offence. All convictions recorded in the 1964 *Police Gazette* for offences which are petty in the context of this survey are arranged according to age groups and sentences.

These graphs are drawn from *Police Gazette* figures, except for drunkenness convictions taken from Justice Statistics. (This is because the *Police Gazette* does not record every conviction for offences of drunkenness.) The graphs show clearly that some offences are characteristically committed by a particular age group, and that for almost all offences fining is the most frequently imposed sentence.

The age group most frequently convicted of a petty offence seems to be the 20–24 year olds. Table C, which expresses the number in each

⁶Supra,

⁷See Female Offending.

age group convicted of each offence as a ratio per 10,000 of the total mean population of that age group, reinforces this opinion, but narrows the gap between the 18-19 year olds and the 20-24 year olds. Clearly, the time during which a man is most likely to be convicted of a petty offence is during his late teens and early twenties—the period of “accidental” offending.

A profile of an accidental petty offender has already been given. Some case histories may help to clarify the picture:

(1) A 16-year-old boy was convicted of assaulting a policeman and was released on 18 months’ probation. He had been staying with an older brother and the brother’s *de facto* wife when a fight broke out between two men who were also staying in the house. The police arrived and were assaulted by a group. The boy tried to pull a constable away from his brother and thus became involved. This was an unpremeditated offence committed by a person who had no previous convictions, whose background was that of a low-income, relatively law-abiding family, and who has not been convicted again during the three years that have elapsed since his conviction. The offence occurred in a specific context. As repetition of the context is unlikely, so is repetition of the offence. This boy is clearly an “accidental” offender.

(2) So, too, is an 18-year-old boy who made “threatening remarks and gestures” to a policeman who was talking to another youth. He continued this behaviour until he was eventually arrested. Then a scuffle broke out and he received a blow on the nose. While being taken to the police station he pushed his face into the policeman’s shirt, at the same time tearing the shirt slightly. He was convicted of disorderly behaviour, offensive behaviour, resisting arrest, and wilfully damaging the constable’s shirt. He was sentenced to a periodic detention work centre for three months, to be followed by probation. He had been fined some months previously for disorderly behaviour, but he has not offended again during the past three years.

(3) A 19-year-old boy was convicted of obscene exposure. This would normally be included in a discussion of minor sexual misdemeanours, rather than of petty offending, but the circumstances of the case are such as to make it an accidental offence as the term is used here.

The offender was the youngest of three children. His parents had been divorced 10 years previously and he had, until shortly before the offence, lived with his mother. He was serving an apprenticeship, and about six months before had gone “flatting” in the city. About this time he began to drink too much and generally lived beyond his means. During a holiday he was convicted twice in one week of disorderly behaviour and wilful damage. He had been drinking on each occasion. For the first of these offences he was fined. On the second occasion he and his companion annoyed some girls and later deliberately overturned a pot plant from a box near a restaurant. For this he was sentenced to a periodic detention work centre for three months, to be followed by

12 months probation. Later, he and his flat-mate were evicted at short notice and slept on the beach for a night. In the morning they washed out their under-clothing and, believing the beach to be deserted, swam naked. However, they were seen, reported to the police, and he was convicted and fined for obscene exposure.⁸

Similar to these offenders are youths who wander aimlessly around on a Friday night, looking for something to do, or who gather in a noisy, jostling group outside a coffee bar or milk bar, blocking the footpath and commenting loudly on the passing public. When this silly behaviour extends to noisy parties at beaches and resorts, to fighting and horseplay in streets, to using public roads as private race tracks for hotted-up cars—then the community justifiably becomes annoyed and talks of hooligans. The accidental offender is undoubtedly a nuisance, and the police are obliged to call a halt to his annoying behaviour. But whether he is properly regarded as a criminal depends on how one defines the term.

The problem with the accidental petty offender is not so much concerned with what he does, as with what to do with him. The probability is that in time the majority of these young irresponsibles will cease offending. But such evidence as we possess is based upon the subsequent records of those who have been apprehended and convicted of petty offences. It is pertinent to ask whether they would have stopped their behaviour but for the recognition brought about by experience that the law would step in if they did not. We do not know the answer.

As the graphs II–XVII in the appendix indicate, fining is by far the most frequent penalty, and in the majority of cases it seems to be the most suitable. The experience of being arrested and of having to appear in Court for trial is, in itself, a chastening experience for many youths. This, together with an appropriate monetary penalty, may be sufficient to prevent further offending—or at least, to limit such offending to a time and place where apprehension is unlikely.

To sentence an impressionable youth to institutional treatment is not only wasteful of the over-strained facilities available, but it may also do the youth harm, both in hardening his attitudes against authority, and in introducing him to a pro-criminal group. The Magistrate has the responsibility of deciding who is likely to respond to a fine and a warning, and who is really in need of supervision or institutional training.

ALCOHOL

It is clear from an examination of case histories, and from discussion with police and probation officers, that liquor is frequently a precipitating factor in all types of petty offences. City police consider that the majority

⁸It is a defence to a charge under section 125 of the Crimes Act 1961, of doing an indecent act in a public place, if the person charged proves that he had reasonable grounds for believing that he would not be observed. There seems no reason why the same defence should not be available to a charge of obscene exposure under section 47 of the Police Offences Act 1927.

of youths arrested for disorderly behaviour of various kinds have been drinking. It has been noticed that a significant proportion of arrests for disorderly behaviour, fighting, assault, wilful damage, and obscene language occur in the vicinity of bars, or as the aftermath of parties. Domestic disputes are often triggered off by the over-indulgence of at least one party.

The possibility of curbing the amount of drinking by young people is small. The legislation which forbids the sale of liquor to a person under 21 on, or from, licensed premises, except as part of a meal, is actively administered. In 1964, for example, 1,623 minors were prosecuted for unlawfully obtaining liquor. Nevertheless, it is common knowledge that there is a great deal of drinking by minors in hotels; prosecutions touch only the fringes of the problem. In any event, the law does not attempt to stop drinking by minors elsewhere than in hotels and public places.

A determined attempt to prevent minors from drinking in hotels altogether would not only involve police officers, who can ill be spared from more important work, but it would also probably result only in shifting the scene of drinking from bars, which are readily accessible to the police in case of trouble, to private houses, beaches, vacant sections, and parked cars. The social nuisance would be exacerbated, and drinking minimised hardly at all.

As the Minister for Justice said, addressing the 1966 annual conference of justices of the peace: "The real problem of minors drinking in hotels is one of attitudes. Many of our younger people do not see anything wrong with this and most of them, at least if they have left school, drink at home and at parties, and the law makes no attempt to stop this . . . The important thing is that people should have sufficient respect for the law to obey it for its own sake, and this is a problem that I am afraid affects many adults as well as young people."

Excessive drinking is a social problem which cannot be solved by legislation alone. It is all too easy merely to create offences and to think that the underlying problem is then solved. As long as the consumption of alcohol remains an accepted feature of social life, it is unreasonable to expect young people to observe different standards from adults. While most adult New Zealanders drink, and most of them are law-abiding citizens, there remains a significant section of the population in whom weakness or aggression is likely to be released by alcohol. A saner public attitude to liquor is needed, rather than further legislation.

Two aspects of excessive drinking are particularly relevant to this study. Alcoholics and their disposal will be dealt with in the section on chronic petty offenders, but drinking by juveniles can suitably be considered at this point.

An unpublished study⁹ of the drinking habits of 200 New Zealand teenagers aged between 15 and 17 years and attending a provincial city secondary school, suggests that access to alcohol by adolescents is wide-

⁹Hancock, M. W., 1965.

spread in New Zealand, and that drinking begins at an earlier age than many people realise. Most young people begin to drink at home, and do most of their drinking there. If this is a widespread practice, it is probably a good one. Children are better introduced to alcohol naturally and sensibly by their parents than furtively by their peers. Only 11 percent of the young people in Hancock's survey took their first drink on the sly.

A paper prepared by the Research Unit of the Joint Committee on Young Offenders¹⁰ investigated Children's Court appearances for offences involving the consumption or possession of liquor. The inadequacy of using Court appearances as an index of the frequency with which an offence is committed is well known. At present, however, no better index is available. Table D is taken from the Joint Committee Research Unit paper.

TABLE D

Children's Court Appearances for Offences Involving Liquor

	1954	1956	1958	1960	1962	1963	Percentage of Offence Totals
Drunkenness	3	9	10	26	31	23	13.8
Drunk in charge of car. .	2	6	4	3	4	1	2.7
Falsifying age for liquor ..	8	7	4	11	29	32	12.3
Minor on licensed premises ..	12	20	28	23	27	27	18.6
Illegal attempts to obtain liquor. .	1	..	6	4	8	12	4.2
Liquor near dance hall ..	14	30	22	17	23	25	17.8
Liquor in public place ..	2*	1*	..*	..*	80	118	27.3
Liquor in no licence area ..	..	..	..	..	1	..	.1
Other breaches .. .. .	..	..	2	4	11	6	3.1
Totals	42	73	76	88	214	244	

*These offences involve possessing liquor in a public conveyance only. Legislation whereby possession of liquor by minors in a public place is an offence did not come into force until October 1961.

Table D shows a sudden rise in offences concerning liquor after 1961. However, an important new offence, "drinking, possessing, or having control of liquor by minors in public places", was created in 1960.¹¹ The legislation was a product, at least in part, of riotous behaviour by juveniles at a blossom festival at Hastings. Previously there was no provision under which minors could be brought to Court for consuming or possessing liquor in a public place.

About 53 percent of the rise in liquor offences in 1961 is attributable to the newly-created offence of having liquor in a public place. It is, of course, fair comment that the police, and officials concerned with heavy drinking among adolescents, were sufficiently perturbed before 1961 to advise the Government to introduce legislation to curb what must have seemed a growing tendency.

Two other features of the Joint Committee study¹² of liquor offences among young people are worthy of attention. The following is a table showing the sex of offenders according to the offence committed:

¹⁰Slater, S. W., 1964.

¹¹Police Offences Amendment Act (No. 2) 1960, s. 3.

¹²Slater, S. W., 1964.

TABLE E

Children's Court Appearances—Sex of Offenders According to Offence Committed

	1954		1956		1958		1960		1962		1963	
	M	F	M	F	M	F	M	F	M	F	M	F
Drunkenness	3	..	9	..	9	1	23	3	28	3	19	4
Drunk in charge of car ..	2	..	6	..	4	..	3	..	4	..	1	..
Falsifying age for liquor ..	8	..	6	1	4	..	11	..	26	3	30	2
Minor on licensed premises ..	9	3	10	10	24	4	15	8	20	7	21	6
Illegal attempts to obtain liquor	1	..	..	..	6	..	4	..	8	..	7	5
Liquor near dance hall ..	14	..	27	3	21	1	17	..	23	..	24	1
Liquor in public place ..	2*	..*	1*	..*	..*	..*	..*	..*	70	10	101	17
Liquor in non-licensed area ..	..	..	..	..	..	..	..	..	1	..	..	..
Other breaches of laws ..	..	..	..	..	2	..	4	..	10	1	4	2
Subtotals	39	3	59	14	70	6	77	11	190	24	207	37
Totals	42		73		76		88		214		244	

This confirms the impression, well-documented in alcohol studies, that excessive drinking is predominantly a male problem. In 1964, 3,695 males aged 17 and over were convicted of drunkenness in the Magistrate's Courts, as compared with 140 women.¹³

Table F shows the range of ages according to offence among juveniles involved in liquor offences:

TABLE F

Children's Court Appearances—Age of Offenders According to Offence Committed

	1954		1958		1960		1963	
	14-15	16-17	14-15	16-17	14-15	16-17	14-15	16-17
Drunkenness	1	2	4	6	9	17*	9	14
Drunk in charge of car ..	1	2	1	3	..	3	1	..
Falsifying age for liquor ..	3	5	..	4	5	6	4	28†
Minor on licensed premises ..	2	10	5	23	3	20	2	25
Illegal attempts to obtain liquor ..	..	1	1	5	..	4	1	11†
Liquor near dance hall ..	2	12	2	20	6	11	4	21
Liquor in public place ..	..‡	2‡	..‡	..‡	..‡	..‡	29	89
Liquor in non-licensed area ..	..	..	..	..	..	..	..	..
Other breaches .. ..	..	..	1	1	2	2	..	6
Subtotals	8	34	14	62	25	63	50	194
Totals	42		76		88		244	

*Four 13-year-olds are included altogether.

†Four 18-year-olds are included altogether.

‡These offences involve possessing liquor in a public conveyance only.

Here the peak age is clearly 16 to 17. This fits in with the view that the frequency of drinking rises with age and increased opportunity. The quantities consumed also increase and there is an endeavour to escape parental control.

¹³N.Z. Statistics of Justice, 1964, pub. Dept. of Statistics, 1965.

The figures, of course, relate only to Children's Court appearances. A previous table¹⁴ indicates that the rate of increase is much greater in the late teens and early twenties.

A similar age and sex breakdown of liquor and drinking offences in 1964 yields much the same picture.

Admissions to New Zealand public hospitals in 1963 of adolescents aged 15 to 21 suffering from alcoholism, and a table showing admissions to New Zealand psychiatric hospitals of young people aged 15 to 21 in 1963-64 have been supplied by the Medical Statistician, Department of Health, Wellington:

TABLE G

Admissions to New Zealand Public Hospitals—1963

Alcoholism: 15-21 Years of Age

Acute Alcoholism

Cases	Sex	Age	Days Stay
1	F	15	1
1	M	16	1
1	F	16	1
1	M	18	2
1	M	18	6
1	M	19	1
1	M	20	1
1	M	20	1
1	M	20	8
1	M	21	1
1	M	21	1

Chronic Alcoholism

1	M	19	34
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Alcoholism Unspecified

1	M	17	1
1	M	18	1
1	M	18	14
1	M	19	1
1	M	19	1
1(readmission)	F	19	22
1(readmission)	F	19	6
1	F	19	2
1	M	20	1
1	M	20	2
1	M	21	1

¹⁴Table C.

TABLE H

*Admissions to New Zealand Psychiatric Hospitals**Alcoholism: 15-21 Years of Age—1963*

Cases	Sex	Age	Days Stay
Alcoholic Psychosis			
1	M	21	140
Acute Alcoholism			
1	F	20	128
Chronic Alcoholism			
1(readmission)	M	20	26
Alcoholism Unspecified			
1	M	21	61

TABLE I

*Admissions to New Zealand Psychiatric Hospitals**Alcoholism: 15-21 Years of Age—1964*

Cases	Sex	Age	Days Stay
Acute Alcoholism			
1	M	18	7
1	M	20	29
Chronic Alcoholism			
1	M	19	93
1	M	20	66
Alcoholism Unspecified			
1	M	17	12
1(readmission)	M	20	23

From these figures it seems clear that New Zealand teenagers, far from rejecting adult values, pay an older generation the compliment of imitating or borrowing their ways and adapting them to their own needs. Widespread teenage drinking is but an aspect of widespread access to alcohol. Most New Zealand adults find pleasure in alcohol, and use it in a more or less sensible manner. It is inevitable that adolescents will imitate this behaviour, in order to prove how "adult" they are—but with less restraint.

TRAFFIC OFFENCES

Traffic convictions form a considerable proportion of the annual total of convictions—a much greater proportion than may generally be realised. Table J shows the number involved:

TABLE J
Magistrates' Courts (Distinct Cases)

Year	Total Cases		Total Convictions		Total Traffic Cases		Total Traffic Convs.		Total Non-traffic Convs.		Traffic Cases as Percent Total		Rates of Traffic Convs. as Percent Convs.	
	M	F	M	F	M	F	M	F			Percent Total	Percent Total		
1959	84,890	5,621	77,220	5,087	57,784	3,951	55,662	3,787	21,658	1,300	68	68	72.0	
1960	94,926	6,775	87,022	6,251	66,369	4,982	63,995	4,830	23,027	1,421	69	69	74.0	
1961	103,540	7,704	95,316	7,024	73,503	5,721	70,881	5,516	24,435	1,508	71	71	74.5	
1962	115,836	8,589	106,822	7,927	83,094	6,477	80,256	6,267	26,556	1,660	72	72	75.0	
1963	121,257	9,181	111,392	8,479	88,055	6,860	84,437	6,607	26,955	1,872	73	73	75.8	
1964	142,585	11,879	131,810	11,045	109,500	9,267	105,065	8,963	26,745	2,082	77	77	79.8	

There is a popular belief that young people are responsible for most traffic offences and most traffic accidents. In 1963 the New Zealand Transport Department published a research report¹⁵ on young drivers. The conclusion was that drivers under the early-20 age group were involved in a fairly large proportion of accidents, but that this proportion was not increasing from year to year. Many of the accidents are no doubt due to an inevitable lack of experience among this age group, combined with teenage ebullience and overconfidence. Alcohol did not seem to be a greater factor in causing accidents with young drivers than with older ones.

The relevance of traffic offences to this chapter lies in the fact that a significant proportion of those who are convicted of traffic offences are likely also to have convictions for other offences. This may seem a sweeping statement, but it is borne out not only by study of New Zealand case histories, but also by research overseas.¹⁶ T. C. Willett examined in detail all convictions for six categories of serious motoring offences which were reported over a two-year period in one of the English Home Counties—653 cases in all. Over one-fifth of the offenders were found to have criminal records for non-motoring offences. A further 60 had no criminal record but were known to the police as "notorious or suspected persons".

Thus about one in every three of the traffic offenders was far from being a respectable citizen who had simply suffered bad luck. It is estimated that less than one person in 10 is likely to be convicted in a criminal court in Great Britain; but the criminal proportion in the traffic offender population studied by Willett is something like three times the chance expectation.

It is hoped to undertake a similar survey in New Zealand. Pilot studies already made tend to confirm Willett's findings in general, though details may differ.

FAILURE TO PAY MAINTENANCE

The theory of generality in offending¹⁷—that a person who has a tendency to break one law has a tendency to break all laws—applies as much to the maintenance defaulter as to the traffic offender.

An examination of the records of established criminals lends force to the theory. A substantial proportion of those who have been classified as chronic petty offenders should be paying maintenance. Whether they do so is another matter. All too often they are as unable to meet their domestic commitments as to conform to social norms. Many maintenance defaulters refuse to pay maintenance because they believe, rightly or wrongly, that their wives have been unfaithful.¹⁸ The men in this group resist all efforts to make them support their wives or their children, and

¹⁵New Zealand Transport Department, 1963.

¹⁶Willett, T. C., *Criminal on the Road*, Tavistock, London, 1964.

¹⁷Eysenck, H. J., *Crime and Personality*, Routledge and Kegan Paul, 1964

¹⁸E.g., see case history (3) on p. 360.

go to prison almost as a matter of principle. If efforts are made to secure an attachment order on their wages, they change their job or cease working altogether. Antagonism to what they regard as "interference" by the law often leads to contempt, and eventually, disregard, of law in general.

It has been suggested that failure to meet payments under a maintenance order can be the first step towards establishing a pattern of offending. The breaking of a marriage or the fathering of an illegitimate child has occurred, in part at least, because of traits in the character of the individual. When he finds difficulty in making the payments required by the Court, the same personality traits are liable to operate, particularly if he has managed to dissolve some of his inhibitions in alcohol. He may steal, he may act out his aggression or frustration, or he may go on an extended drinking spree to escape his worries.

Any of these activities is likely to take him to prison, either for a specific offence or for failure to pay maintenance. Imprisonment does not reduce the amount of maintenance he owes—it merely prevents his earning, while increasing the amount due.¹⁹

VANDALISM

Vandalism—defined as wilful, malicious, and purposeless destruction of property—is a world-wide phenomenon. While it seems to have increased in recent years, it is by no means necessarily a product, or accompaniment, of affluence. Looting and destructiveness are typically associated with war and riots and serve as a means both of persecution and retaliation. Typically a young man's crime, vandalism can be regarded as representing an outlet for feelings of aggression and violence which are not, whether from choice or opportunity, resolved in a healthy or acceptable manner.

Vandalism is one type of "petty offending" which cannot be regarded lightly. It ranges from drawing on the walls of public toilets to slashing upholstery in railway carriages or cinemas, defacing and destroying gravestones in a cemetery or damaging such vital facilities as public telephones.

It is almost impossible to calculate the cost of vandalism. Rare plants and trees in parks, which may take years to grow, are not easily replaced. Life may be endangered when essential equipment is tampered with. Surf club members have found lifesaving equipment damaged beyond repair; ambulance tyres have been slashed; people have been unable to summon

¹⁹There is an exception, however. In suitable cases (e.g., when a man is already employed, and his employers are willing to keep him on, or when work can be arranged), he may take part in a release-to-work scheme. He will live in the prison during his sentence, but be released to go to work each day. He agrees to abide by strict conditions regarding his behaviour while on release-to-work parole, e.g., he must go straight to and from work, he must not go into an hotel, or drink any alcoholic liquor, he must not convey messages to or from other prisoners. After an appropriate deduction for board and daily expenses has been made, his wages are available for reducing arrears of maintenance.

a doctor or fire brigade when public telephones have been broken. Mail has been destroyed when some "skylarker" has tossed a lighted firecracker into a mail box on 5 November.

In at least one town in New Zealand window-box gardens outside a railway station and along a main street had to be abandoned after a year because of vandalism. The gardens were replaced with stones and concrete, and citizens were permanently deprived of something of beauty.

The 1965 Police Report²⁰ shows that in 1964, 4,262 offences of wilful damage were reported to the police. Of these, 956 ended in prosecutions; 214 were found after inquiry not to constitute an offence; 398 were cleared by some means other than prosecution; and 2,494 were not cleared.

In other words, only 22.43 percent of all offences reported were "solved" to the extent that someone was prosecuted, while 58.57 percent were not cleared by the end of the year. The remaining 19 percent were either found not to be offences, or cleared by some other means. Thus, although those who are caught are usually dealt with appropriately, they represent only a small proportion of the group.

Public reaction to serious acts of vandalism is understandably violent. Such offences may have a strong emotional impact, and they are commonly singled out by those who urge a reintroduction of corporal punishment. There is also a tendency on the part of the public to seek to match the severity of punishment with the difficulty in catching the offender, and stress is laid on the "deterrent" effect. These attitudes, however, are not reflected in the sentencing of the courts. Graph IX²¹ shows how those convicted of wilful damage were dealt with in 1964. Nine were sentenced to imprisonment for a period of up to three months and two to imprisonment for a period of three to six months; 26 were released on probation; five were both fined and released on probation; 19 were dealt with without penalty by being convicted and discharged, or admonished and discharged, or ordered to come up for sentence in a specified number of months. The remaining 386 were fined.

By far the most common penalty for vandalism is a fine, although periodic detention is sometimes used in those centres where it is available. A striking feature is the extent to which restitution is ordered to be paid. Information collected in 1963 showed that an order for restitution was made in two out of three cases of wilful damage—a far higher proportion than for any other offence.

It is difficult to know how to regard the vandal, and to decide his category of petty offending. The most satisfactory conclusion, as often happens, assumes the form of a compromise. Some vandalism is relatively harmless. The scribblers on walls, the painters of slogans, and the litter-bugs can be included among the accidental petty offenders. The most

²⁰Report on the New Zealand Police for the year ended 31 March 1965.

²¹See p. 373.

seriously destructive vandalism—tyre-slashing, smashing telephones, damaging vital equipment—which typifies acts for which there can be no rational explanation, is not petty in any sense.

MAORI OFFENDING

So far there has been no discussion in this chapter of differences in petty offending between Maori and European. Nor has there been any discussion of Maori crime in relation to drinking. The reason is that, while certain statistics are available, it is by no means sure that they furnish an accurate and reliable estimate of a Maori problem, as distinct from a national one. The difficulty lies not only in defining the boundaries of the term Maori, but also in making sure that the term is accurately applied, so that statistics describe neither more nor less than a specific Maori population. As long as any doubt exists about the accuracy of the available statistics, it is preferable not to use them.

As a general comment, however, it seems that Maori petty offending does not differ greatly from non-Maori offending in quantity, but rather in degree. Rather more Maori youths appear to become involved in accidental petty offences of the disorderly behaviour type, while rather fewer adult Maoris are involved. The adult Maori alcoholic vagrant is not often seen in Court. It may be that there are fewer of them, or it may be that more are cared for by friends and relations. The number of Maori youths involved in the offence of disorderly behaviour is a reflection of the difficulties which these boys encounter in moving to cities—a topic which deserves special consideration and which is beyond the scope of this chapter.

VAGRANCY

Vagrancy has had a long history in English law, going back in statutory form to 1388. That history is of very considerable interest to the criminologist, and is not without relevance to a proper understanding of the issues associated with present-day vagrancy legislation. A short historical note on vagrancy is contained in an appendix to this book.

The New Zealand law regarding vagrancy is to be found in three or four sections of the Police Offences Act 1927 and has changed little in substance since the Vagrant Act 1866. This was broadly based on the United Kingdom Vagrancy Act of 1824. Such change as has occurred extends the scope of vagrancy as a criminal offence. Thus the provision now contained in section 50 of the Police Offences Act was altered in 1926 to place the burden of proving lawful means of support on the defendant. Again, the law was extended in 1901 to create the offence of habitually consorting with reputed thieves or prostitutes, or persons who have no visible means of support. Section 50 provides:

“(1) Where any constable has reasonable cause to believe that any person has no lawful means of support or has insufficient lawful means of support, he may arrest such person, either with or without warrant, and bring him before a Magistrates' Court.

(2) If such person fails to prove to the satisfaction of the Court that he has sufficient lawful means of support or that such means of support as he has are lawful, he shall be deemed to be an idle and disorderly person within the meaning of this Act.

(3) The fact that any person charged under this section can produce or prove that he possesses money or property shall not be taken into account in deciding such charge unless he shows by his own or other evidence that he honestly obtained such money or property."

The section appears to have no counterpart in England, and those who regard it as necessary might fairly be asked why a provision that has been done without in England is essential to protect the New Zealand public against criminals. It is difficult to assign limits to the potentialities of such a sweeping provision as an instrument of harassment. However, it must be stressed that there is little evidence that in recent times at least it has been abused.

Yet, if the section were applied in accordance with its terms, it would mean that any citizen could at any time be called upon by the police and the Courts to account for himself. It makes the person without means a continual candidate for suspicion.

Other relevant provisions are section 49 and part of section 52. Section 49 reads:

"Vagrants. etc.—Every person shall be deemed an idle and disorderly person within the meaning of this Act, and be liable to imprisonment for any term not exceeding three months—

- (a) Who is the occupier of any house frequented by reputed thieves or persons who have no visible lawful means of support; or
- (b) Who is found in any such house in company with such reputed thieves or persons and does not give a good account of his lawful means of support and also of his being in such house upon some lawful occasion; or
- (c) Who wanders abroad or places himself in any public place to beg or gather alms, or causes or procures or encourages any child so to do; or
- (d) Who habitually consorts with reputed thieves or prostitutes or persons who have no visible lawful means of support."

Section 52 (j) describes as a rogue and vagabond, liable to imprisonment for a term not exceeding one year, every person:

"Who, being a suspected person or reputed thief, frequents any port or harbour, river, canal, navigable stream, dock or basin, or any quay or wharf, or any other public place, or any house, building, or other place adjacent to any such port or harbour, river, canal, navigable stream, dock or basin, or quay or wharf, with a felonious intent."

These provisions are in strong contrast to the general criminal law, with its precisely framed definitions and its care to deal with specific acts and not a mode of behaviour or living.

The arguments for retaining the vagrancy laws in their existing form fall into two categories. In the first place, some of the vagrancy offences enable the police to deal with potentially dangerous offenders before they have committed their crimes. This is particularly true of section 52 (1) (j), and it is to be noted that despite the ordinary dictionary meaning of "to frequent" [to visit often, to resort to habitually], the Court has held²² that a suspected person can "frequent" a place although he is only there once. The provision seems originally to have been aimed principally at cargo thieves and pillagers, but in New Zealand at present it finds a more valuable use against would-be molesters of girls and children.

The law also—and here section 49 is relevant—enables the police to break up groups of criminals who may be planning further crimes.

Finally, vagrancy offences afford some means of holding in custody persons who are believed to have committed grave crimes but who may flee, or strike at key witnesses before sufficient evidence to justify prosecution has been collected. But it is a clumsy procedure—it applies haphazardly and it may or may not be possible to invoke the provisions in a given case. Attention should also be paid to the comments of Lord Hewart, C.J. in *R. v. Dean*:²³

"It would be in the highest degree unfortunate, if, in any part of the country, those responsible for setting in motion the criminal law should entertain, connive at, or coquette with the idea that in a case where there is not enough evidence to charge the prisoner with an attempt to commit a crime, the prosecution may nevertheless on such evidence succeed in obtaining and upholding a conviction under Vagrancy Act 1824."

The second set of arguments is that provisions such as section 50 enable the police to do something to prevent people from harming themselves through their own ignorance, irresponsibility, or infirmity. Thus they can apprehend youths or girls who are leading idle and promiscuous lives, or alcoholics who frequent parks and public places to the annoyance and anxiety of respectable people. Girls who are convicted of being idle and disorderly can be treated for venereal disease if they are suffering from it, and can in some cases be turned away from empty and disreputable lives. Elderly drunks and wanderers, who have neither homes nor families, can be looked after for a time, and even prison may provide them with the warmth and comfort their lonely lives lack.

Nonetheless, the use of these provisions even for laudable motives is open to serious criticism. If the community considers it right that the police should have powers of preventive arrest, and that persons may be held in preventive custody, it would be well to make such provision

²²*Goundry v. Police* (1954) N.Z.L.R. 692.

²³(1924) 18 Cr. App. R. 133.

openly and directly, and to spell out with more precision the circumstances in which the powers can be exercised. Sections 49, 50, and 52 are both too wide and too narrow for this purpose. If such restrictions on liberty are not favoured by society, (and the absence of preventive custody from our law is often the subject of misinformed boasting), then the vagrancy provisions we have discussed are impossible to justify on this ground.

Likewise the use of arrest and brief imprisonment as substitutes for social welfare is to be deprecated. Perhaps our social organisation leaves no alternative. If so, then it is our society, and certainly not the police, which stands indicted. If welfare services are insufficient to cope with contemporary problems, they should be reorganised or expanded. It seems wrong that their functions should be assumed by the overworked police and overcrowded prisons.

CHRONIC OFFENDING

Irwin Deutscher²⁴ coined an apt phrase when he described the petty offender as "society's orphan". He is a nuisance, rather than a danger to society. Because his "cure" or "removal" will not spectacularly benefit society, as would the "cure" of burglars or rapists, and because he does not often commit the sort of crimes to arouse public agitation, he tends to be forgotten in the search for new methods of treatment and new approaches to crime.

Most recent research seems to be in psychological or sociological terms, and is not intended specifically for penal purposes. Furthermore, it is often contained in masters' theses in overseas universities and hence not readily accessible. Such material as we have been able to study reinforces the impression that it is essential to distinguish between the aggressive petty offender and the inadequate petty offender.

Both, if they are chronic offenders, are likely to be at least habitual drunkards, and very often alcoholics. In the aggressive petty offender, alcohol is likely to stimulate such offences as disorderly behaviour, fighting, obscene language, theft, assault, and often sexual offences, of a more or less serious nature. In the inadequate offender, alcohol is likely to increase his inability to cope with ordinary living. He will be picked up for sleeping out, for begging, for petty theft which he has bungled, or for being idle and disorderly in the sense of having insufficient means.

It may seem that alcohol is being overrated as a causative factor in petty offending. It must be conceded that no research has been done in New Zealand to estimate the influence of alcohol in this respect. Generally speaking, it seems that when a man is arrested and charged with a particular offence, say, burglary or assault, no accurate record is kept of whether he had been drinking at the time of the offence; nor is he likely to be also charged with drunkenness if he were drunk at

²⁴Deutscher, Irwin, *The Petty Offender: Society's Orphan*, Federal Probation, 1955.

the time. Hence statistics are of little value in determining the proportion of crimes committed "under the influence". However, the common inference by those who deal with men at the time of their arrest, and those who deal with them after conviction, is that alcohol plays a significant role in many crimes and is a direct cause of some crime.²⁵

In some offences, of course, liquor would impose a definite handicap. Skilled safecracking, for example, requires a degree of competence that would be considerably reduced by alcohol. On the other hand, the need for alcohol, like the need for narcotics, may lead a man to crimes which he would not otherwise commit. Similarly some crimes, particularly violent ones, are committed in a drunken state. Often the offender suffers extreme remorse when he sobers up sufficiently to realise what he has done.

In discussing chronic petty offenders, it is necessary to recognise a second distinction between those who are alcoholics, and those who are not. The true alcoholic is a social rather than a penal problem, and he should not be regarded as a criminal. He suffers from a condition as a result of which he may, it is true, commit crimes, either to satisfy his craving for alcohol or because his judgment is impaired by the disease. But the crimes are not necessarily committed as a result of any criminal intent.

It is very difficult to convince people that alcoholism does not merely result from a lack of self control, but is, in fact, a symptom of a deepseated malaise. The alcoholic's position is similar to that of a drug addict—once the addict has established the habit, it is almost impossible for him to break it. Certainly, he cannot cure himself unaided.

No doubt some will argue that the alcoholic and the drug addict are responsible for their own predicament either in "trying" the drug in the first place, or in continuing to drink once symptoms of alcoholism appear. To this objection there are two answers. First, although it is possible to over-generalise, there do appear to be certain factors, or clusters of personality traits, which make a person possessing them likely, in certain situations, to bolster up or to disguise his inadequacies with drugs or alcohol. Such a disposition is no more the fault of the man or woman possessing it than a tendency to diabetes or early baldness.

The second point to note is that, partly as a consequence of the personality traits involved, the person who drinks excessively or uses drugs is likely to be the last to realise or admit that he is addicted. His family and friends will notice symptoms that he himself will disregard. This is why he fails to stop at the first symptoms.

Alcohol increases the tendency to extraverted behaviour. If such behaviour occurs in private, then it will not be prosecuted and is not criminal. Similar behaviour by a person who lacks opportunity for

²⁵See also *The Raiford Study: Alcohol and Crime*, Shaw Earl Grigsby, 1960. British Journal of Criminology, Vol. 54, 1960.

privacy is criminal and is likely to be prosecuted. In concrete terms: it is an offence to be drunk in a public place; it is not an offence to be drunk in one's own home.

In an American study Irwin Deutscher²⁶ suggests that existing organisations for dealing with vagrants and alcoholics are inadequate. Courts, he says, simply send men to prison or fine them. Alcoholics Anonymous, though remarkably successful, is largely a middle-class organisation and does not contain many people with whom the vagrant can identify himself. Skid-row missions fail for the same reason.

Deutscher suggests that what is needed for these men, whom he describes as "retreatists" in the process of abandoning society's norms and goals, is a group with whom they can identify, whose norms and goals are not unattainable, and a place where they can work at their own level, meet and talk and drink with their peers, without violating the law. Deutscher envisages trained social workers, attached to Courts, to overcome the social isolation of most petty offenders. Such isolation is a self-reinforcing barrier. As vagrants have no one with whom to work out their problems at even the verbal level, so their problems multiply, and so they become further estranged from normal society.

Deutscher's approach is interesting, but his "solution" is as yet untested. Before speculating on possible treatment, let us consider just what happens to those alcoholics and vagrants, particularly the elderly ones, who commit offences that can be regarded as petty.

The nature of their offences will vary according to whether they are aggressive inadequates or passive inadequates, but the most common offence will be drunkenness. The central record is likely, by the time the man is 60 (if he lives to that age), to show more than 100 separate convictions, many of them carrying a prison sentence, some disposed of with a fine. Although the offender may never have served a sentence longer than six months, and some sentences may be only a few weeks, the aggregate may amount to years. In addition, there may be a further 100 or so convictions for drunkenness that have not been recorded in the central system, generally because they have carried prison sentences of only a few days.

In such cases imprisonment is obviously ineffective, either as a cure or as a deterrent. Its only positive function is to provide the man with a place to sober up, a chance to build up his health and protection against the weather. Magistrates have been heard to remark in resigned tones as they sentence such an offender to three months imprisonment for drunkenness, "Well, that should see you through the winter". In the absence of other facilities, it is difficult to see where else these men could be cared for. In prison they are fed, given medical treatment, and kept warm, clean, and clothed. They may even earn a few dollars to cheer them on their release.

²⁶Supra.

Whenever possible, the Salvation Army will offer its services as an alternative to imprisonment. The cases it turns down are those in which it has previously tried to help, and found the offender intractable. Magistrates make use of the facilities of the Salvation Army and other Church organisations as often as they are available.

The other main facilities available to elderly alcoholics without friends or families are the public hospitals and mental hospitals. Male medical wards often contain a surprising number of men suffering from the debilitating effects of alcoholism—malnutrition and often bronchitis, or some other of the diseases to which alcohol predisposes its addicts. Hospitals do extremely valuable and thankless work in treating such people and in restoring them to some measure of health. But, by their nature, they treat the effect of the disease, rather than its cause. The exception is that a spell in a medical or psychiatric unit may be sufficient to halt the progress of a young alcoholic.

Mental hospitals can, in some circumstances, work quite successfully with the motivated alcoholic—that is, the alcoholic whose drinking is related to some discernible personality defect or sparked off by a particular situation. But there are at present considerable difficulties involved in the admission of alcoholics to mental hospital. Under present legislation²⁷ an alcoholic cannot be compulsorily admitted to a mental hospital solely on account of his alcoholism. He must either be certifiable under the terms of the Mental Health Act, in which case his alcoholism is merely one aspect of his illness, or he must seek admission as a voluntary patient. A good many alcoholics do so, and some manage to last out a course of treatment.

Others, however, cannot accept the discipline, or the lack of alcohol, or perhaps have no real intention of staying any longer than is needed to recoup their strength. They return time and again to mental hospital, as they do to prison, and impose a heavy strain on the patience and resources of the hospital staff. These are the men to whom prison and hospital represent a "revolving door"; they expect that, after a binge, they will go to one or other of these institutions and be cared for until they are fit to go on another binge.

Neither the prison nor the general hospital can be blamed for failing to halt this process. In dealing with alcoholics, both are assuming a function that is simply not theirs. A mental hospital is the appropriate place for motivated alcoholics who can be helped by psychiatric treatment; prison is the disposal demanded by society for some of those who commit crimes. There remains a large number of unmotivated alcoholics who are criminals only by accident, who are helped by neither prison nor hospital—"helped", that is, in the sense of "cured".

In the present state of knowledge, there is little prospect of their cure. Aversion therapy, psychotherapy, and Alcoholics Anonymous are

²⁷Mental Health Act 1911. But the Alcoholism and Drug Addiction Act 1966 opens the way to the treatment of alcoholics in mental hospital.

effective with those who are willing not only to be helped but also to help themselves. For the remainder, there is prospect of little more than the present cycle of freedom, drinking, and hospital, freedom, drinking, and prison.

The case histories which follow indicate something of the varied personalities and problems of the criminal alcoholic:

(1) An Englishman, now in his fifties, employed as a cleaner, married with four children, came to New Zealand in 1929. He has lost contact with his relatives in England. His marriage is fairly turbulent; there have been three separations on grounds of inebriety and cruelty. He has been described as emotionally insecure, and full of self pity. His wife is understanding and fairly supportive, despite the fact that he assaults her when he is drinking. He is a chronic alcoholic, with a very low I.Q. He has had convictions for assault, disorderly behaviour, theft, burglary, and drunkenness. The pattern is one of retreat—withdrawal from normal society into his own world.

(2) A young man, still in his early twenties, has amassed a total of 20 convictions in 12 years. His well-meaning but inadequate parents lost control of him while he was still a child. He is of good intelligence and completed a trade apprenticeship. Although well behaved and hard working during his borstal and prison sentences, he drinks heavily when "outside" and works only intermittently. His earliest Court appearance was for not being under proper control; he has since been convicted of theft (five times), possessing a firearm while under 21, assault, indecent language, obscene language, carrying an offensive weapon, being idle and disorderly, unlawfully getting into a motorcar, inciting lawlessness, disorderly behaviour, car conversion, bicycle conversion, burglary, sexual intercourse with a girl under 16 years (twice), and drunkenness.

Because this offender is young, and many people have made efforts to help him, his career is fairly well documented. By contrast, it is almost impossible to describe the careers of some elderly, vagrant alcoholics in detail, as they are migratory, use aliases, and have numerous convictions (generally for drunkenness) which are not recorded in the central statistical system. Often they either forget, or hide, episodes in the past, so that on the rare occasions when someone—usually a probation officer—tries to compile a case history, it may be misleading.

(3) When a man has been appearing in Court regularly for many years on charges of drunkenness, theft, or disorderly behaviour, both he and the Magistrate come to regard another spell in prison as inevitable. Whether such an attitude is justified is a pertinent question. What is to be done with the sort of man of whom one Magistrate said: "For seven years this man has been degenerating and has become a consistent petty thief, and cadger, and a social pest. He is a man without any sort of sheet anchor."

This man was born in Dublin in 1900. He served in the Army during the First World War, came to New Zealand in 1920, and has worked on farms and in freezing works all over New Zealand. His marriage lasted for 10 years, and he has paid only irregular maintenance

for his two children. He rejoined the Army in 1941 and served overseas. On his return, he claims, he found that his wife had had a child by another man. He left her and has lived a vagrant life ever since. Efforts to provide the stabilising influence he lacks have failed, at least partly because of his very strong feelings of resentment, and his conviction that he "spites" authority by offending.

Cases of this type exemplify the truth of Eysenck's²⁸ statement that while punishment may have the desired effect of eliminating a certain type of conduct, it may also have the contrary effect of stamping in the undesirable conduct even more strongly than before, and making it a stereotyped pattern. In the present stage of knowledge, it is difficult to predict the effect of any particular punishment on any particular individual, nor is it even possible to say whether strong or weak punishments will produce differing effects. Eysenck²⁹ suggests that the old lag—the recidivist with many convictions behind him and many prison sentences—is showing a stereotyped behaviour pattern, compulsively self-punishing and maladaptive. By repeatedly sending him to prison and punishing him for each criminal episode, society merely stamps in this type of conduct and does nothing to convert him into a useful, law-abiding citizen. Furthermore, a prison sentence may even provide satisfaction of certain of his needs.

Tadeusz Grygier³⁰ has suggested that the repeated short-term sentences imposed on chronic inadequate offenders not only serve no deterrent purpose; they might even satisfy some social and emotional needs. A research programme was set up in Toronto reformatories to investigate this premise, and to determine the nature of such needs. Grygier stated the problem thus:

"The issue of the chronic petty offender is well-known. The problem itself, like that of the vagrant and the drunk, is chronic and petty. It presents a nuisance rather than a danger. It wastes the time of the machinery of law enforcement. It demoralises police and courts alike. Fines, if imposed, are not paid; probation is broken; short-term punitive and preventive measures are cruel, and therefore seldom used, despite legislation. Most often we impose short sentences of imprisonment knowing that the prisoner will be back soon after release. Why will he?"

Previous research on homeless transients, including criminal transients, had shown that offenders with repeated, non-indictable³¹ offences

²⁸Eysenck, H. J., *Crime and Personality*, Routledge and Kegan Paul, 1964.

²⁹*Ibid.*

³⁰*The Chronic Petty Offender: Law Enforcement or Welfare Problem*. Paper to the annual joint meeting of the American Society of Criminology and the American Association for the Advancement of Science, Philadelphia, 30 December 1962 (reported in *Proceedings of the Association, Science*, 1963. No. 139, p. 647).

³¹The Canadian term is used because this was a Canadian study. It corresponds roughly to the use of "petty" in this study.

differed significantly in many social and psychological respects from offenders with more serious, indictable offences. The petty offenders showed themselves to be inadequate as people and utterly dependent on others for maintenance and support; their homeless existence was passive, and they drifted rather than travelled. By contrast, the indictable offenders had more initiative, and were more aggressive, independent, self-reliant, and adequate as persons; they depended on luck rather than on charity, were relatively younger, started their criminal careers earlier, and came from more disorganised and impoverished families.

The results of the study on homeless transients indicated clear differences between what we have termed the aggressive and the inadequate offender. The second and more intensive research project Grygier carried out not only supports the distinction but also challenges the soundness of generalising on criminals from data on the serious offender alone. The results seem almost wholly applicable to the New Zealand chronic offender.

First, it was found that age was "normally distributed" between 20 and 69 for the 109 subjects, with the largest concentration between 45 and 54. Such a distribution is not typical of a normal criminal population, where the highest distribution is usually in a younger age range. The age range from middle to late middle age is a specific feature of chronic petty offenders. (For a comparison with New Zealand see Graphs II to XVII—Appendix.)

Grygier made a thorough investigation of family and friendship ties, and found that social inadequacy and isolation appeared to be important pathological factors. Few offenders had had any contact with their relatives for years. Their friends were drinking companions. Their sexual life was promiscuous and confined to occasional drinking partners. Ninety-eight percent of the male offenders and 76 percent of the female offenders were single, separated, or divorced. At an age when most of the general population are married, few women and almost no men had such ties. Hardly any offenders were members of clubs; very few had any interest in religion. Most expected to live alone after release, and plans for the future, especially for work, were extremely vague. Heavy drinking was the most striking single feature in every offender's story. Seventy-five percent admitted that they could not control their drinking. The minority who claimed such control had numerous convictions for drunkenness.

While it is not suggested that drinking is the cause or the effect of this pattern of life, it is certainly an important part of it. However, nearly all the subjects in Grygier's research denied craving for alcohol while in prison, which suggests that if heavy drinking is used as an escape from problems, prison sentences may provide a sufficient escape substitute. Significantly, while the subjects resented arrest, and were ashamed of their prison sentences, they did not resent actually being in prison; others

saw little difference between being in and out. More than two-thirds claimed that they felt lonely outside prison, and many mentioned a feeling of relief when they were sentenced to the "same old place". Sentences were accepted as a part of life of which they were ashamed, but about which they could do nothing.

Andry's³² research into short-term prison sentences and their value may be mentioned in this context. Andry asserts that the short prison sentence of only a few days or weeks is almost entirely valueless.³³ He investigated the backgrounds and personalities of those who typically received short sentences, and his conclusions are very close to Grygier's, although the descriptive terms vary. His research indicated that certain personality types, such as the immature and the neurotic, were more likely than others to become recidivist when subjected to current penal practice.

For this group, which is very similar to Grygier's passive inadequate group, Andry recommended reconstruction centres: "What is really wanted is a certain degree of reforming punishment, combined with therapy, coupled with an opportunity to change aspects of the personality through satisfying work—this being especially true of the immature and the neurotic offender. At the same time the stigma of prison, with the resultant difficulties of rehabilitation, should, if possible, be avoided. This suggests a combination of existing forms of treatment of offenders, excluding prison, but with greater emphasis placed upon clinical therapy and with the addition of a fairly prolonged course of vocational training, occupational therapy, and group activities . . . This thinking has led the author to the concept of a reconstruction centre, where clinical therapy (both group and individual) and training classes can be combined, where group activities can be undertaken and a communal spirit fostered, where there can be supervision, as with current probation, and where at the same time instalments of fairly heavy fines can be paid every week out of a man's current earnings".³⁴

When Grygier examined work records and qualifications, he found that homeless transients and chronic petty offenders presented a number of characteristics typical of the chronically unemployed. Handicapped by a prison record and by alcoholism, as well as by their shortcomings in personality, skill, and education, they are not only often unable to find employment, but they also find difficulty in keeping jobs when they do find them. Drinking offers two escapes from the insecurity: momentary, through elation and loss of consciousness; and more prolonged, through arrest and imprisonment. It is quite possible that were it not an offence

³²Andry, R. G., *The Short-term Prisoner, a study in forensic psychology*. Stevens, 1963.

³³The Criminal Justice Amendment Act 1967, discussed elsewhere in this volume, is of considerable importance in the context of petty offending which in the past has so often been dealt with by short sentences. The widespread extension of adult periodic detention work centres will in many cases house the petty offender, teach him regular work habits and help him to pay his fine.

³⁴Pp. 115, 116, *ibid*.

to be publicly drunk, or idle and disorderly, many chronic offenders would have to break more serious laws in order to return to the shelter of a prison.

To digress briefly from Grygier's research, Merfyn Turner³⁵ has done intensive experimental work with chronic petty offenders in an attempt to help them to rehabilitate themselves, even after many years of vagrancy. He ran a small, highly personal hostel in London, where men lived on release from prison as members of a family. A strongly supportive and accepting environment was found to be essential in enabling men to have the confidence to look for and keep a job. Turner is convinced that most men can be helped to help themselves, given the support of a community such as he describes. But he is equally convinced that a socially inadequate person can never overcome his inadequacies on his own. To be successful eventually, any arrangement must meet not only the passive needs of the inadequate offender but also his positive need to contribute and to earn.

Grygier carried out a number of psychological tests on his subjects—a field which he regarded as wholly unexplored:

"A single case of murder has sometimes led to extensive psychiatric literature, scientific articles, books, and even films; but the psychological and social problems of the most common inhabitant of our prisons, the petty offender, remain unexplored. He is dealt with in haste by busy Magistrates, fined, or locked up and soon released without any adequate attempt at rehabilitation or understanding. But he soon returns, compounding his own misery and his embarrassing demands on taxpayers' money."

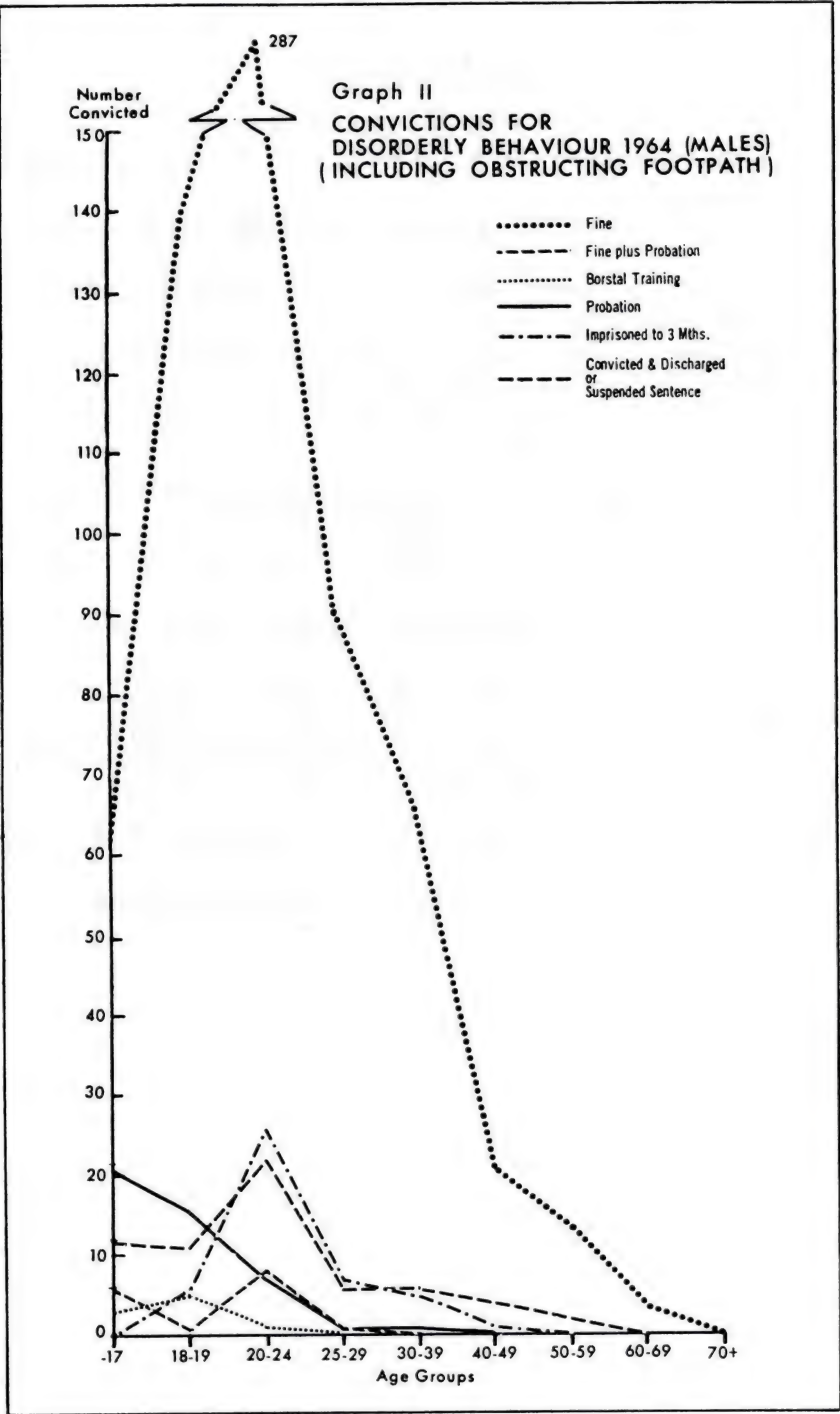
The results of the various tests are interesting, but rather too technical to be quoted here. The impression, however, is that the inadequacy and passivity of the chronic offender makes him quite incapable of surviving unaided in present-day, competitive society. Alcoholism is only one aspect of his total inferiority as a person.

Chronic petty offenders have very little initiative, imagination, or persistence, but they present a problem which requires all three if it is to be resolved. The human problems which research has revealed involve more than mere law enforcement, and are not confined to offenders. As our knowledge extends, the old answers are seen to be increasingly inadequate and stubbornly resistant to change. To try to build on such uncertain foundations would be folly. Rather must we subject the problems to comprehensive inquiry so that we may learn to prevent and cure, rather than continue merely to cope with, petty offending.

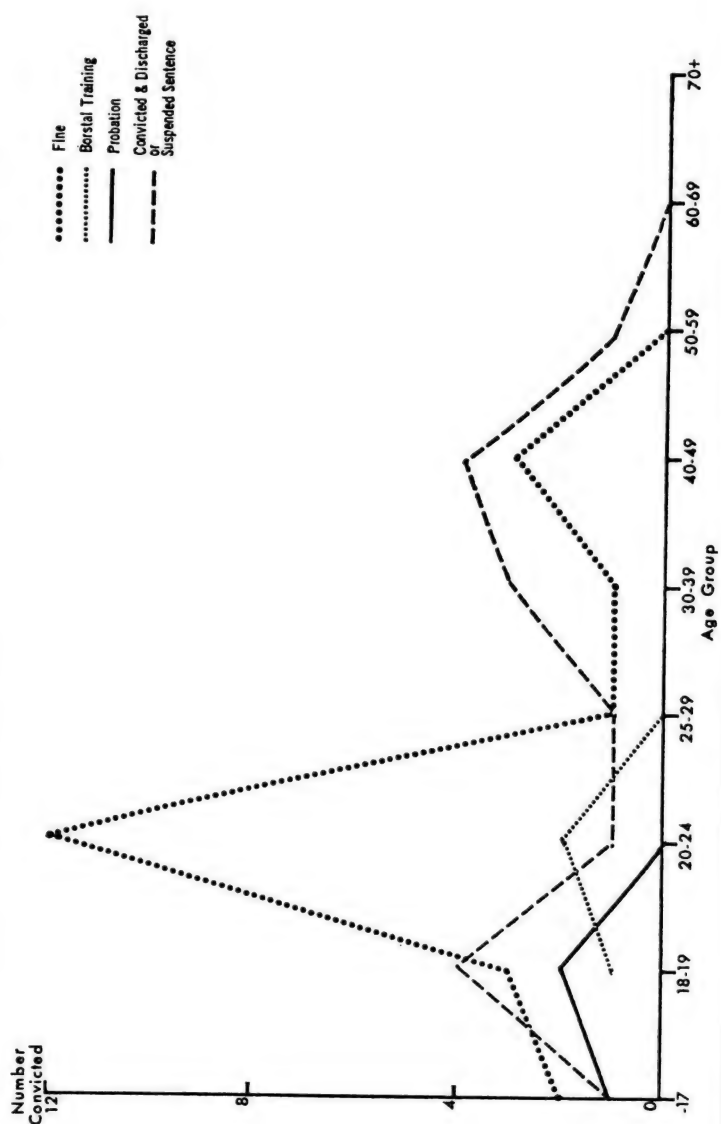
³⁵Turner, Merfyn, *Safe Lodging*, Hutchinson, 1961.

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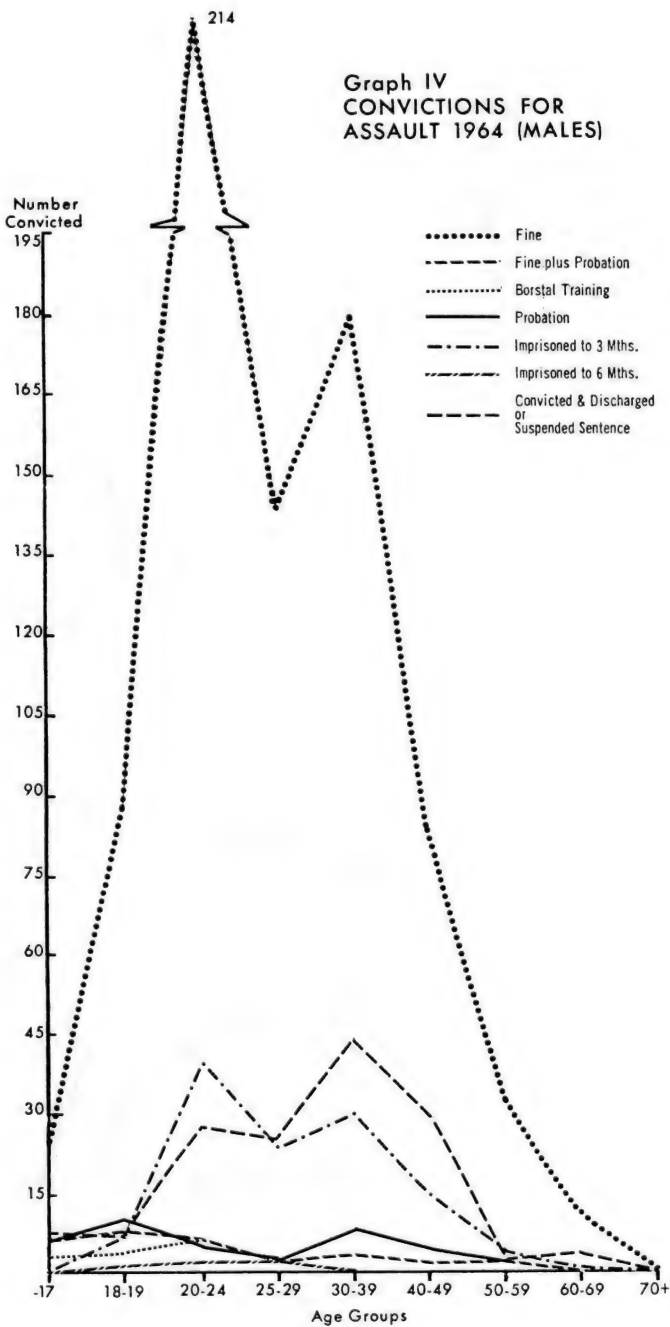
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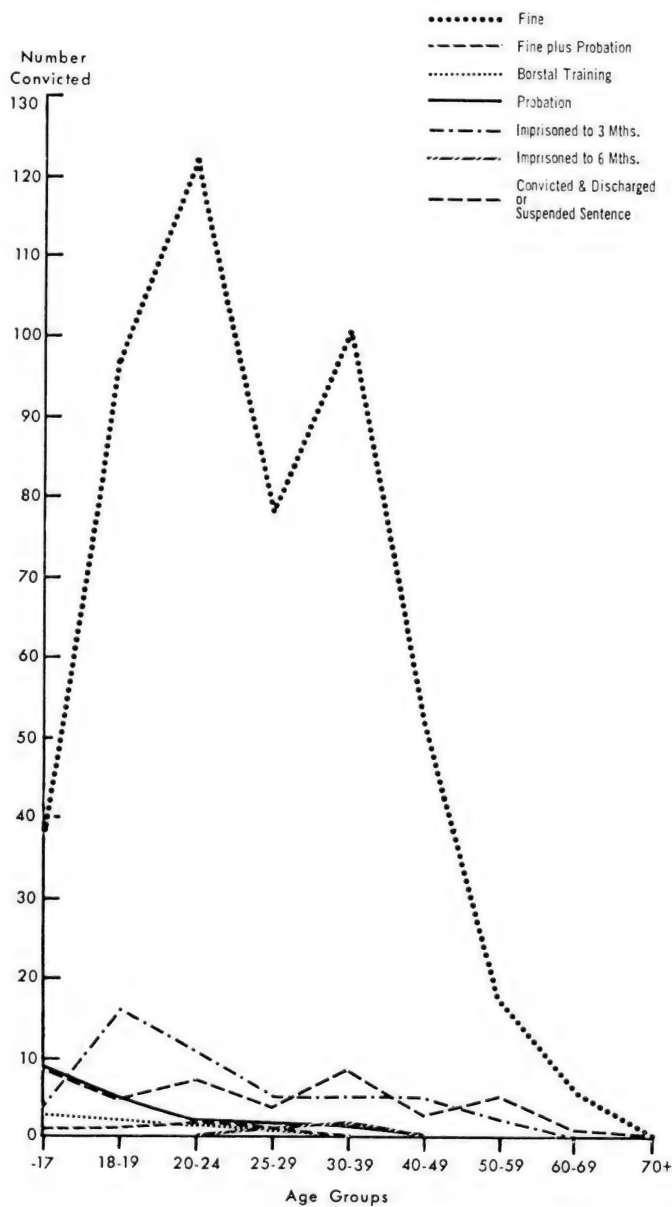
Graph III CONVICTIONS FOR DISORDERLY BEHAVIOUR 1964 (FEMALES)

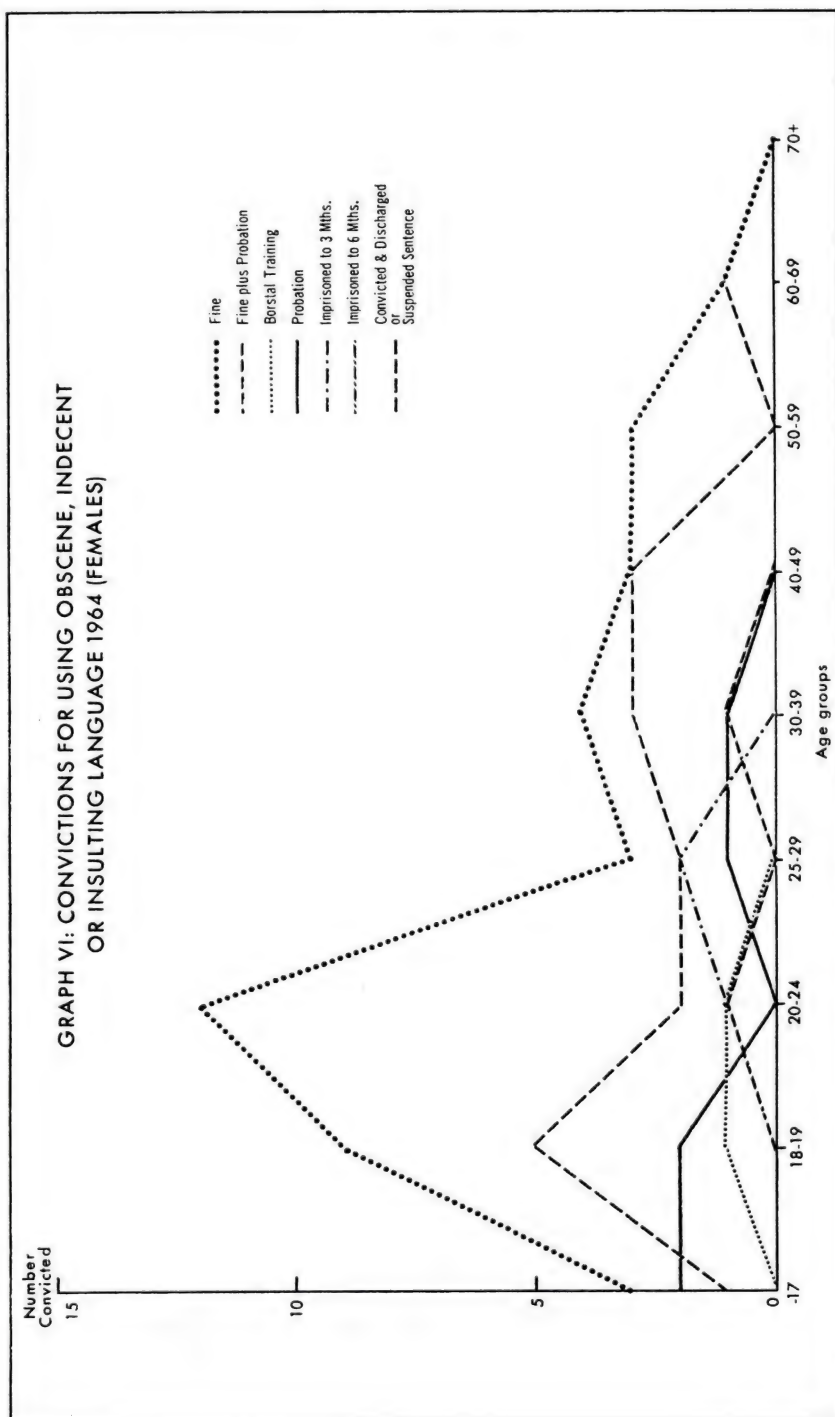


Graph IV
CONVICTIONS FOR
ASSAULT 1964 (MALES)

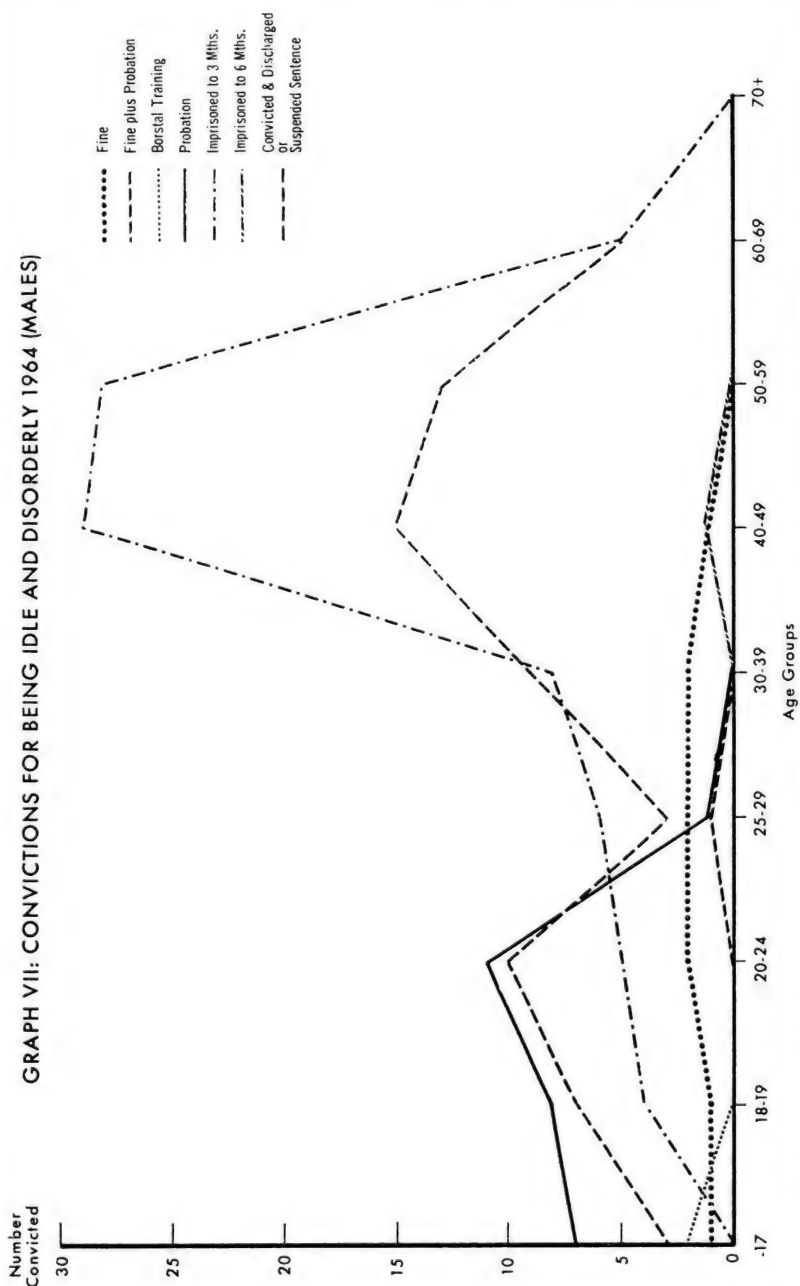


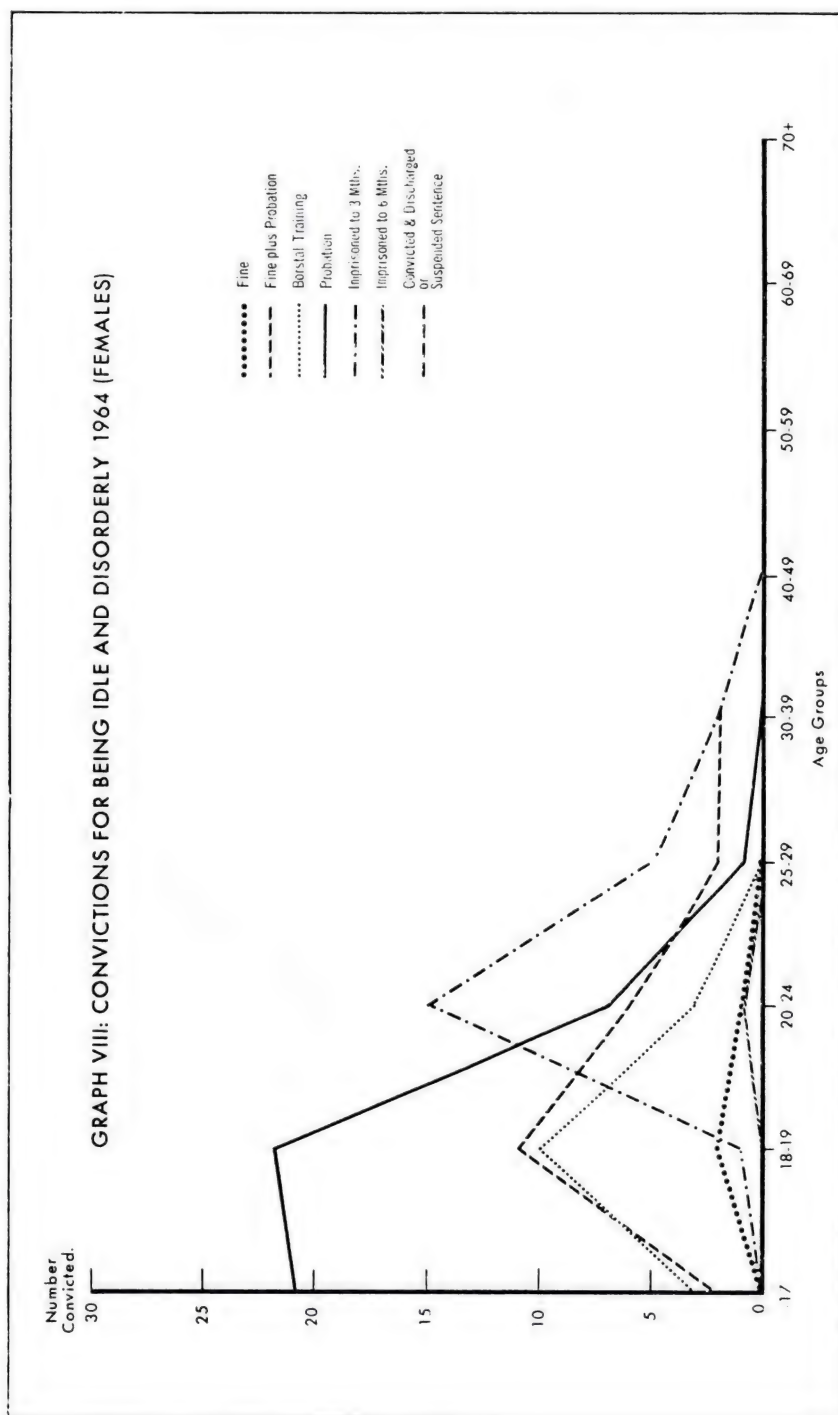
Graph V CONVICTIONS FOR OBSCENE, INDECENT
OR INSULTING LANGUAGE 1964 (MALES)



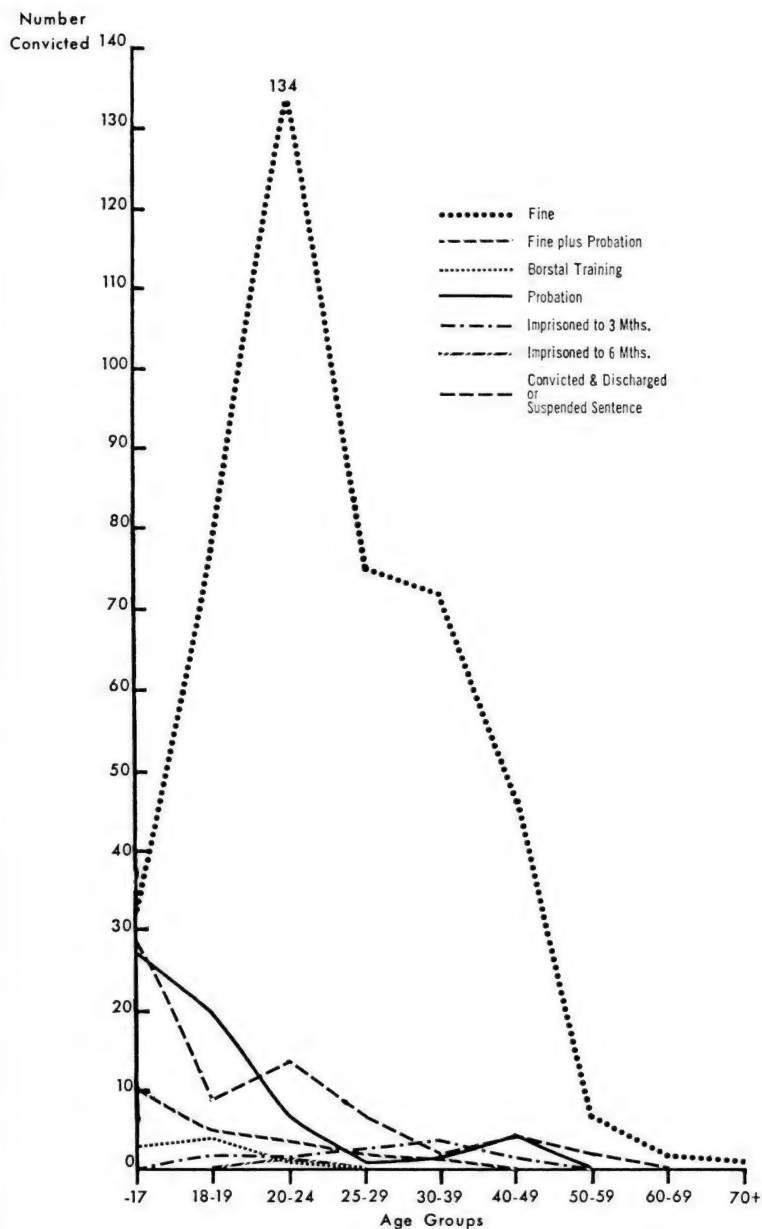


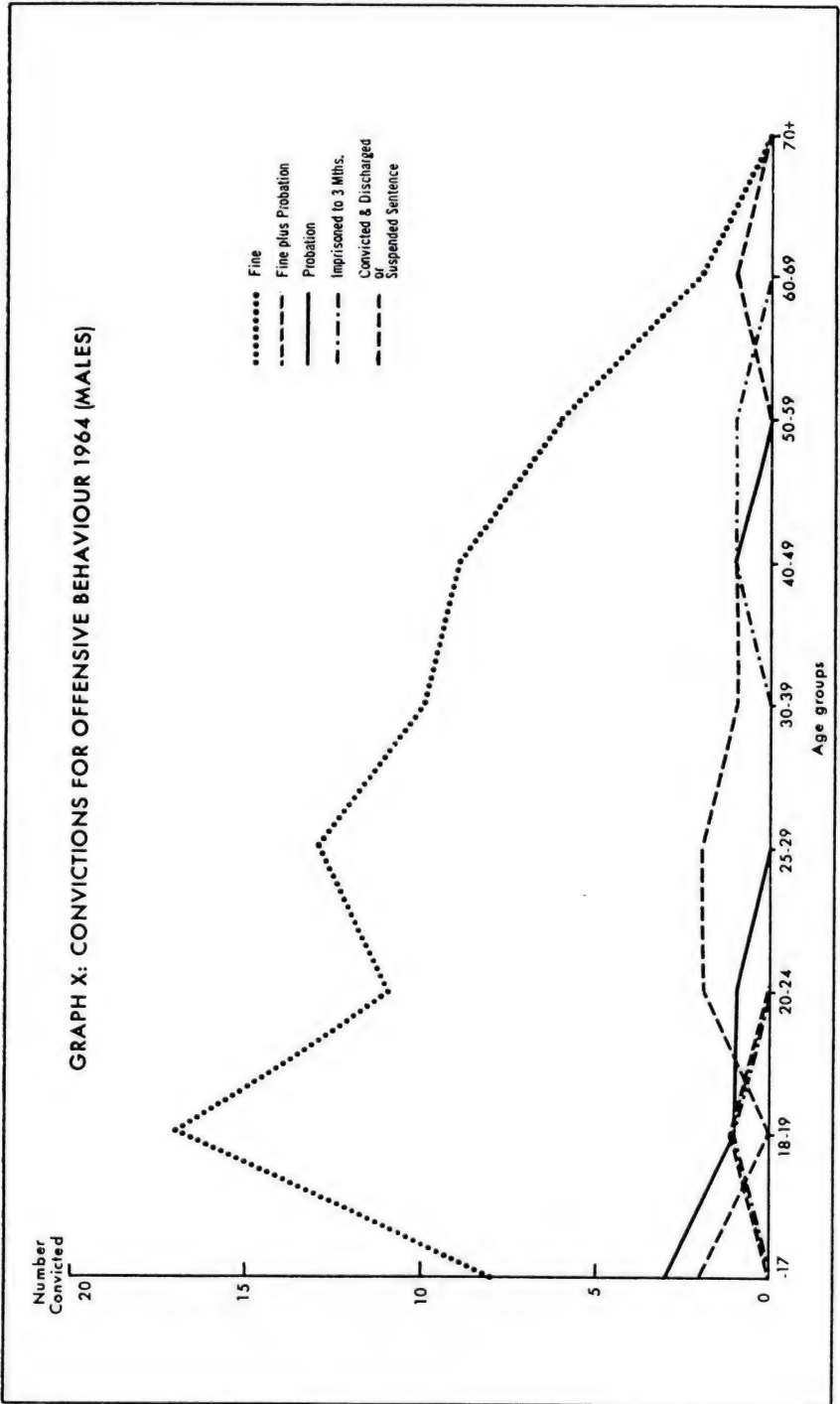
GRAPH VII: CONVICTIONS FOR BEING IDLE AND DISORDERLY 1964 (MALES)



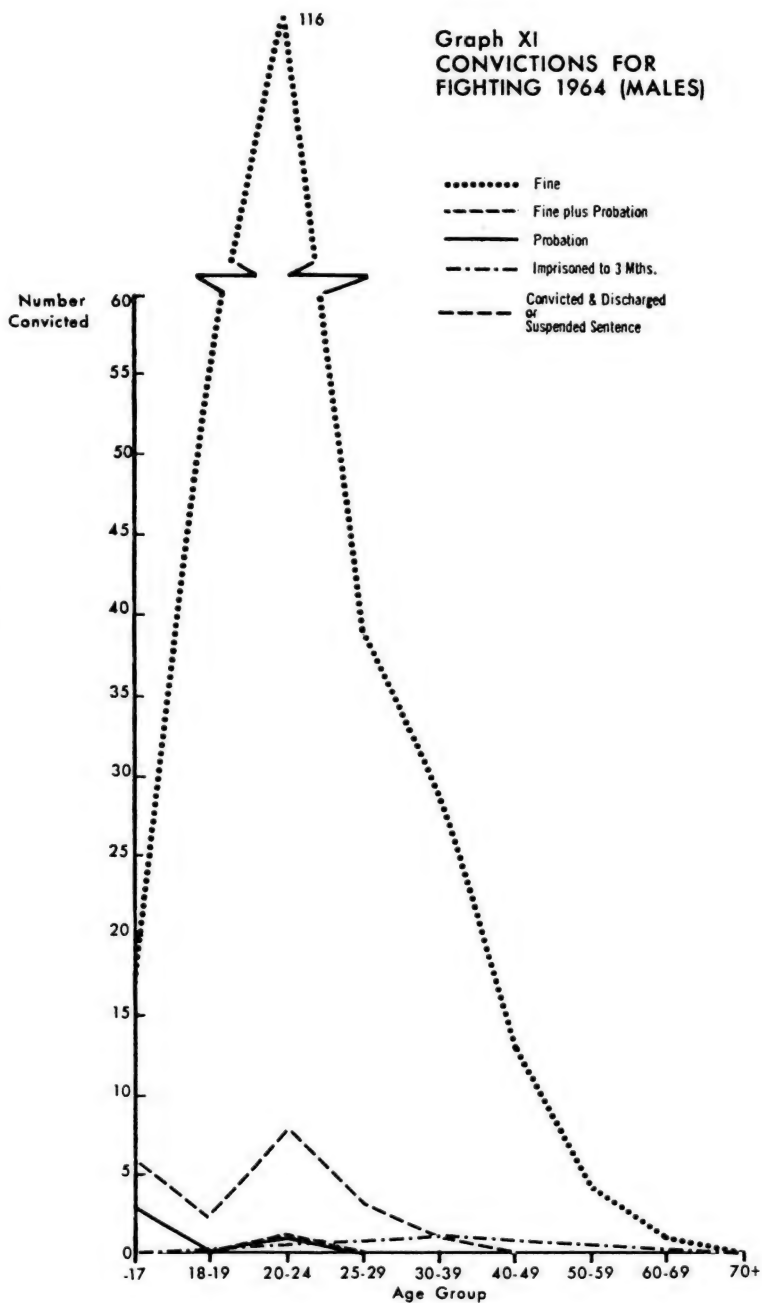


Graph IX
CONVICTIONS FOR WILFUL DAMAGE 1964
(MALES)

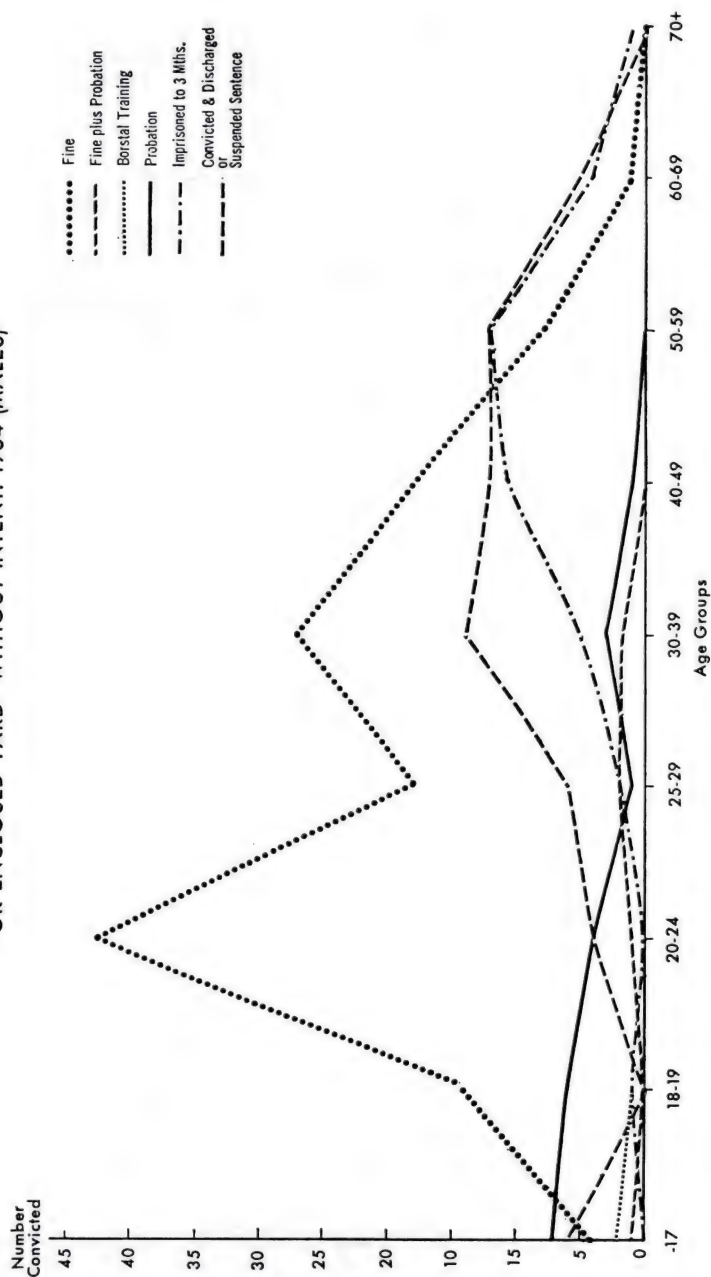




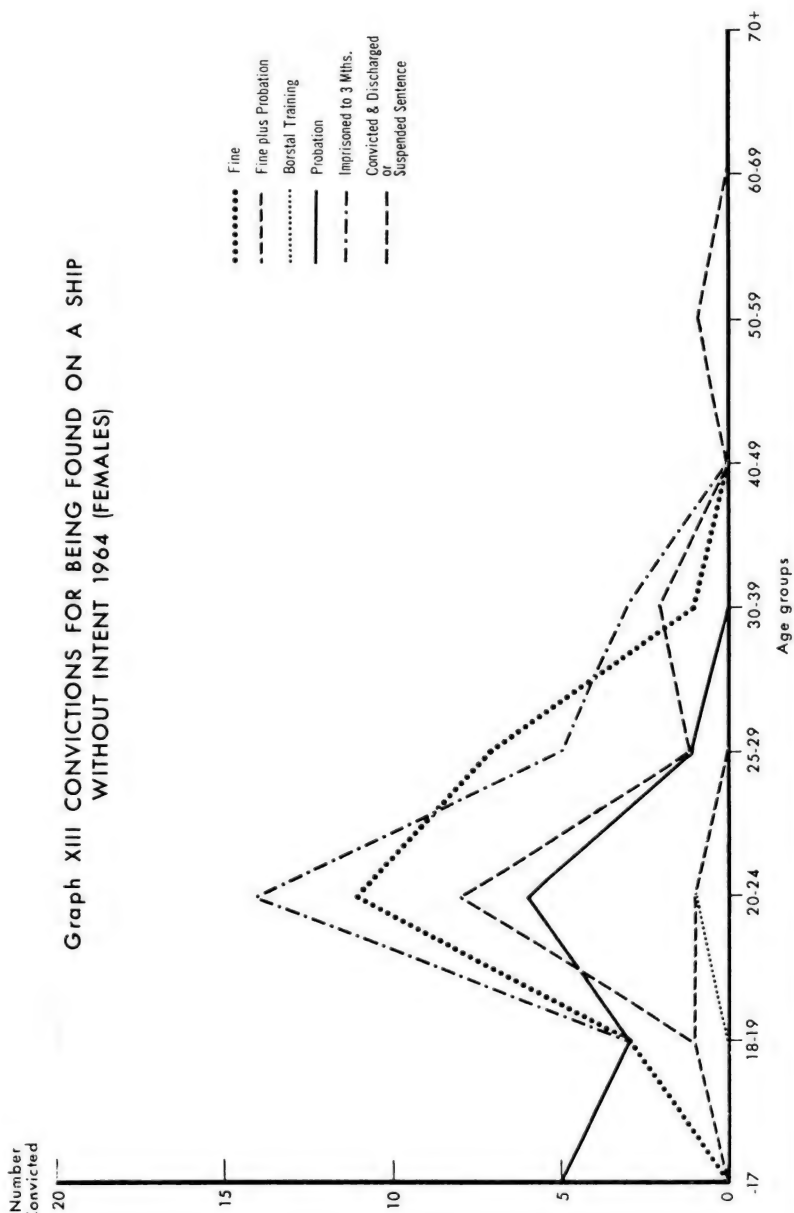
Graph XI
CONVICTIONS FOR
FIGHTING 1964 (MALES)

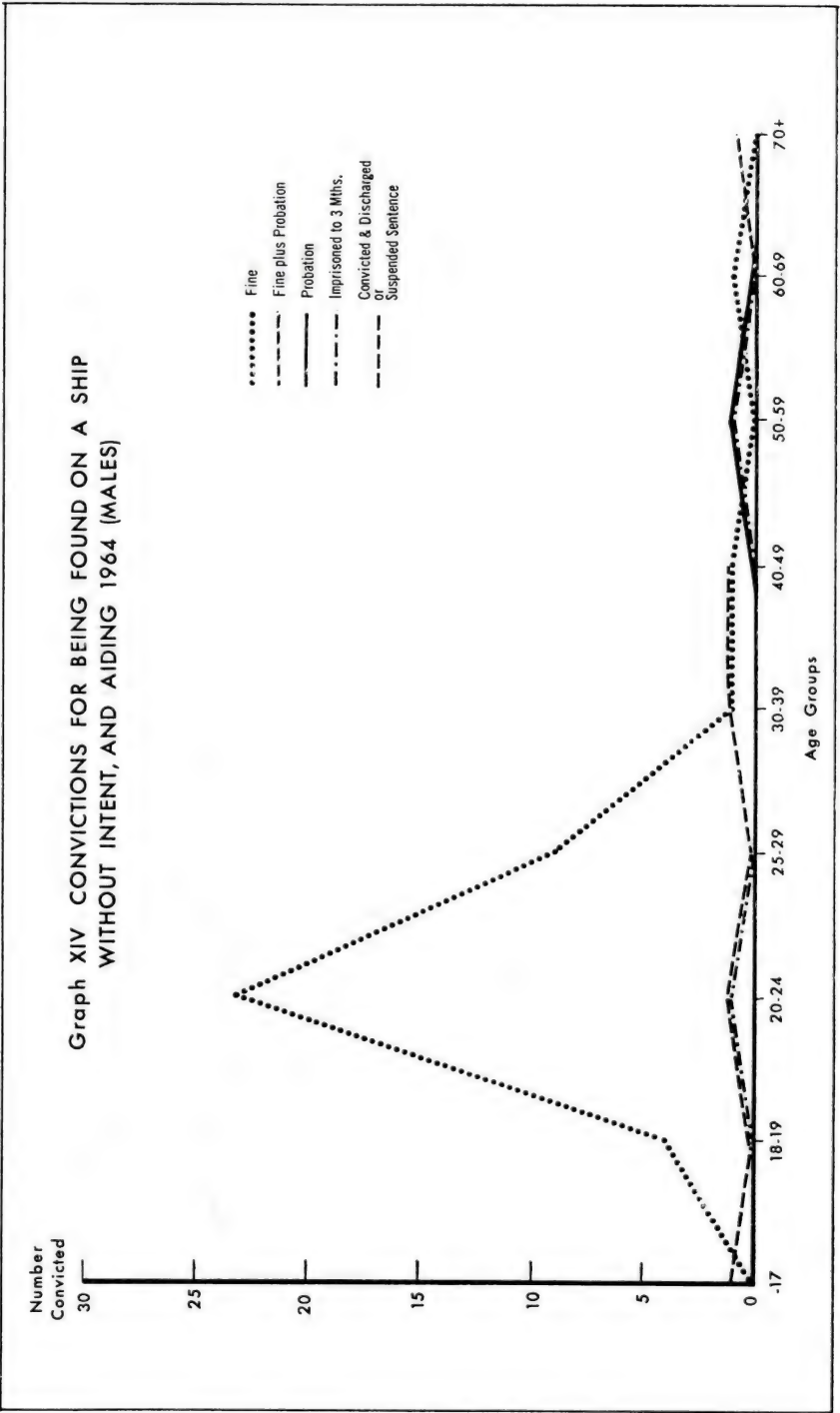


Graph XII CONVICTIONS FOR BEING FOUND IN A BUILDING
OR ENCLOSED YARD WITHOUT INTENT: 1964 (MALES)

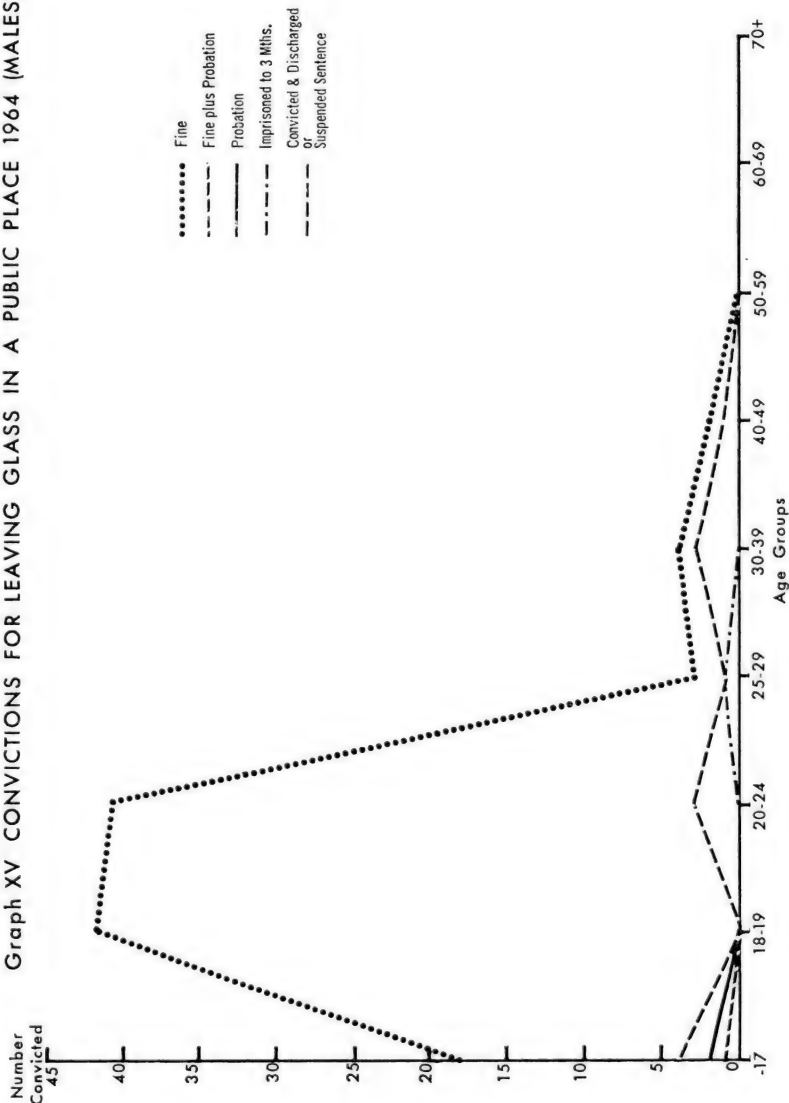


Graph XIII CONVICTIONS FOR BEING FOUND ON A SHIP
WITHOUT INTENT 1964 (FEMALES)

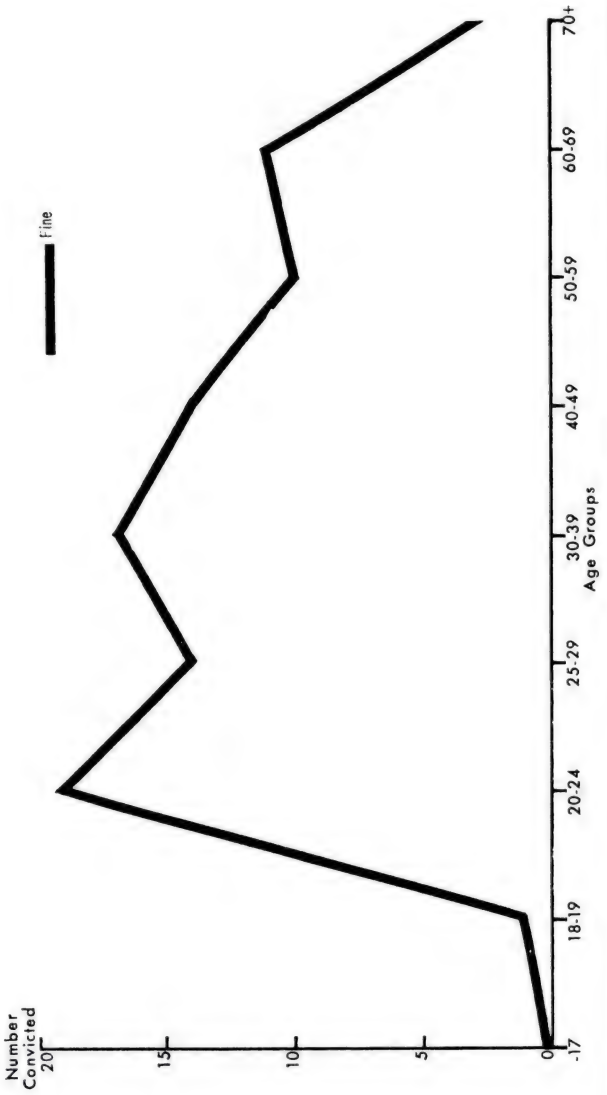




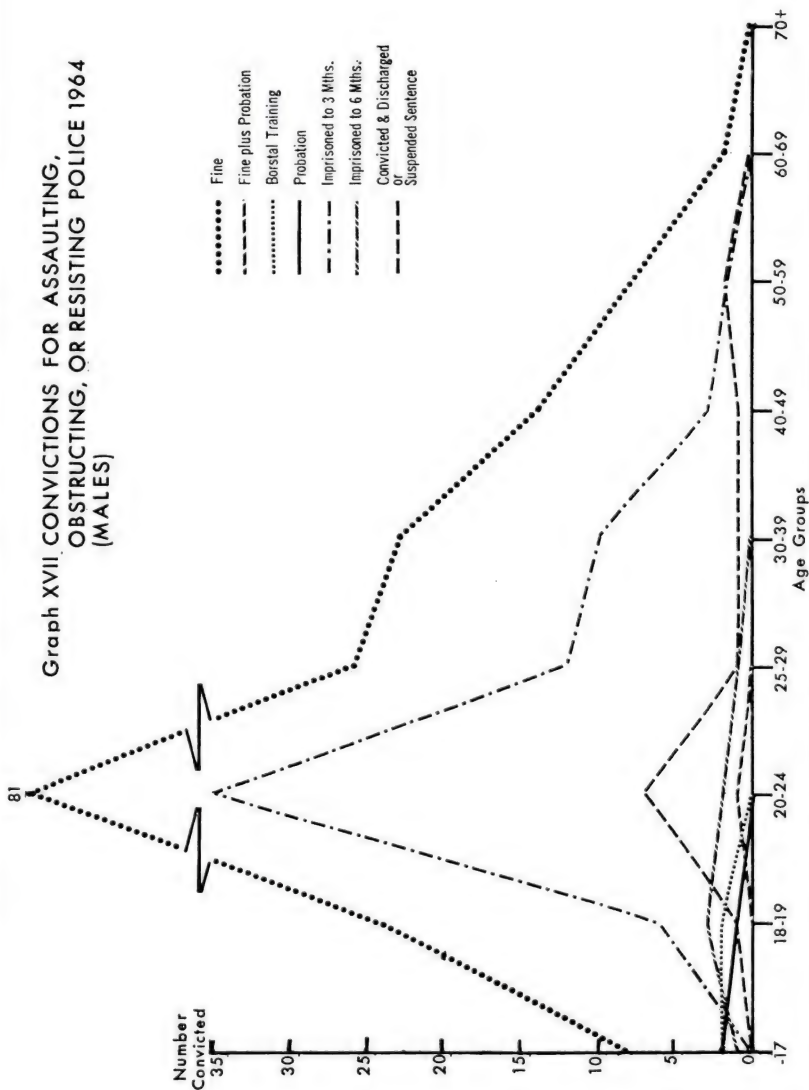
Graph XV CONVICTIONS FOR LEAVING GLASS IN A PUBLIC PLACE 1964 (MALES)



Graph XVI CONVICTIONS FOR BEING FOUND
IN A GAMING HOUSE 1964 (MALES)



Graph XVII. CONVICTIONS FOR ASSAULTING,
OBSTRUCTING, OR RESISTING POLICE 1964
(MALES)



CHAPTER 12

BAIL AND REMAND

A basic principle of our system of justice proclaims that a man is to be presumed innocent until he is found guilty by a properly constituted Court of Justice. But how scrupulously do we consider the liberty of an accused person in the period before his trial? How much is his human personality and his entitlement to the assumption of innocence respected during the conduct of his trial? To reach conclusions, rather than to gain impressions, it would be necessary to make a critical examination of the legal provisions for arrest and the manner in which they are used by the police; to study the law governing remands and its implementation by the Courts; to examine the conditions under which prisoners in custody on remand are held; and to examine the procedure and ritual of trials in the Courts.

This chapter has been restricted to "remand", which covers the period between the arrest of an accused person and the beginning of the hearing of the charge preferred against him, or of his trial if his offence is dealt with by the Supreme Court.

A person charged with an offence may be brought before the Court either by a summons to appear or following his arrest. Section 19 of the Summary Proceedings Act 1957 provides:

When an information has been laid—

- (a) Any Magistrate or Justice or any Registrar (not being a constable) may issue a summons to the defendant, in the prescribed form:
- (b) A warrant, in the prescribed form, to arrest the defendant and bring him before a Court may be issued by any Justice or any Registrar (not being a constable), whether or not a summons has been issued or served, if the defendant is liable on conviction to a sentence of imprisonment, and if—
 - (i) In the opinion of the Justice or Registrar a warrant is necessary to compel the attendance of the defendant; or
 - (ii) Having regard to the gravity of the alleged offence and the circumstances of the case, the Justice or Registrar is of opinion that a warrant should be issued:

- (c) In any case, a Magistrate may, if he thinks fit, and whether or not a summons has been issued or served, issue a warrant, in the prescribed form, to arrest the defendant and bring him before a Court.

In addition the Crimes Act 1961 gives the police wide powers of arrest. For instance s. 315 (2) provides:

Any constable, and all persons whom he calls to his assistance, may arrest and take into custody without a warrant—

- (a) Any person whom he finds disturbing the public peace or committing any offence punishable by death or imprisonment;
- (b) Any person whom he has good cause to suspect of having committed a breach of the peace or any offence punishable by death or imprisonment;
- (c) Any person who within his view offends in any manner against the provisions of the Police Offences Act 1927, and who fails to give his name and address on demand;
- (d) Any person who within his view commits an offence against paragraph (eee) of section 3 of the Police Offences Act 1927 (which relates to the obstruction of a footpath or footway or carriageway) and, after being warned by him to desist, persists in committing that offence;
- (e) Any person whom he finds offending against any of the provisions of sections 41 to 54 of the Police Offences Act 1927 (being the offences comprised under the headings "Drunkenness and Riot", "Idle and Disorderly Persons", and "Rogues and Vagabonds").

Section 316 (5) goes on to provide that where any person is arrested he is to be brought before the Court as soon as possible.

The extent to which the summons procedure is used is obviously a matter of great importance in considering the fairness and justice of our criminal trial practice. However, it is not dealt with in this chapter, principally because of lack of information. We are thus not concerned for the purposes of this survey with those who are summoned to appear in Court, nor whether the summons procedure is used as often as it could be. This would, however, be a most useful subject for investigation.

Where an accused person comes before the Court upon his arrest, it is seldom possible to proceed at once to hear and determine the charge against him, unless it is a very minor or simple one. In most cases the prosecution will have had no time to organise the proof of its case, nor is the defence likely to be ready to answer the charge. Moreover, if the maximum penalty for the offence alleged exceeds three months imprisonment, the accused person, when his case does come up for hearing, may claim the right to be tried by a jury in the Supreme Court after a preliminary hearing in the Magistrates' Court. This normally involves further delay.

Until the coming into force of the Summary Proceedings Amendment Act 1964 an accused person committed to the Supreme Court for trial had to await the next sessions of the Court before his trial could commence. If a session was in progress when he was committed, he nevertheless had to await the following sessions, since his indictment could be presented only at the beginning of a session. As, in most places, sessions of the Supreme Court for criminal business were held quarterly, an accused person committed for trial might have to wait for up to three months in custody. The 1964 amendment altered the procedure and made possible the speedy trial of an accused person committed while criminal sessions of the Supreme Court are in progress.

The question arises: What is to be done with the accused person between his first appearance in court and his final trial? The law must strike a fair balance between the public interest in ensuring that a person charged with a criminal offence stands his trial and the principle that a man whom the law presumes to be innocent will not be deprived of his liberty unless it is absolutely necessary. It may be particularly important for an accused to be at liberty; in custody, he may be greatly hampered in finding witnesses and preparing his defence.

The interests of the State would, of course, be safeguarded if all accused persons were held in custody pending trial, but in many cases it would be an injustice to the person concerned. In a free society, if the principle that a person is presumed to be innocent until proved guilty is to have practical meaning, as many accused persons as possible should be at liberty pending their trial.

Where there is to be an interval between the appearance of an accused person before a magistrate or justices of the peace and the disposal of his case, the Court may allow him to go at large, or may grant him bail, or in certain circumstances may remand him in custody. The principal statutory provisions are contained in ss. 46 and 47 of the Summary Proceedings Act, and s. 319 of the Crimes Act:

46. Whenever any hearing is adjourned, then, in any case where the defendant is liable on conviction to a sentence of imprisonment or where the defendant has been arrested, the Court or Justice, as the case may be, may allow the defendant to go at large or may, subject to the provisions of section 319 of the Crimes Act 1961 and of section 47 of the Criminal Justice Act 1954, remand him in custody for the period of the adjournment.

47. (1) Where a defendant who is remanded in custody is not granted bail, the Court or Justice remanding him shall issue a warrant, in the prescribed form, for his detention in custody for the period of the adjournment.

(2) Where a defendant who is remanded in custody is granted bail, then, if he is not released immediately, the Court or Justice remanding him shall issue a warrant in the prescribed form, for his detention in custody for the period of the adjournment, and shall certify on

the back of the warrant the consent of the Court or Justice to the defendant's being bailed, the number of sureties (if any) to be required, the sum or sums fixed, and the condition or conditions imposed.

319. (1) Everyone is bailable as of right who is charged with any offence that is not punishable by death or by imprisonment.

(2) Everyone is bailable as of right who is charged with any offence for which the maximum punishment is less than three years imprisonment, unless the offence is one against section 194 of this Act (which relates to assault on a child, or by a male on a female).

(3) Everyone is bailable as of right who is charged with any offence against any of the following provisions of this Act, namely:

- (a) Section 111 (false statements or declarations):
- (b) Section 151 (duty to provide the necessities of life):
- (c) Section 152 (duty of parent or guardian to provide necessities):
- (d) Section 153 (duty of employers to provide necessities):
- (e) Section 154 (abandoning child under six):
- (f) Section 185 (female procuring her own miscarriage):
- (g) Section 190 (injuring by unlawful act):
- (h) Section 202 (setting traps, etc.):
- (i) Section 249 (acknowledging instrument in false name):
- (j) Section 262 (taking reward for recovery of stolen goods):
- (k) Section 280 (imitating authorised marks):
- (l) Section 281 (imitating customary marks).

(4) Notwithstanding anything in the foregoing provisions of this section, no one is bailable as of right who is charged with any offence punishable by imprisonment, if he has been previously convicted of any offence punishable by death or imprisonment.

(5) Subject to the provisions of section 318 of this Act, everyone who is charged with any offence and is not bailable as of right is bailable at the discretion of the Court.

The fact that the law provides for bail as of right does not by any means ensure that the person charged will in fact be released on bail. If Parliament intended in enacting this section that those bailable "as of right" should, in fact, go free, at least save in special circumstances, then there is a defect in our criminal practice. It would have been easy to provide that bail should be discretionary in every case, as it is in England. Indeed subsection (4), which gives the Court a discretion whenever the defendant has been previously convicted of an offence punishable by imprisonment, was new in 1961 and its existence offers support for the argument that in other cases "bailable as of right" was meant to have a practical and not merely legal significance. If the Court imposes conditions that the defendant is unlikely to be able to meet, his right is an illusory one.

Where bail is at discretion, the Courts, in exercising that discretion, have evolved and apply certain tests. As a very general statement bail may properly be refused:

- (i) Where there are reasonable grounds for thinking that the accused person may abscond. This may depend upon a number of considerations, but in particular—
 - (a) The seriousness of the offence charged;
 - (b) His criminal record;
 - (c) Whether he has a settled home.
- (ii) Where the accused is likely to commit further crimes if he is left at large.
- (iii) Where there is danger of the accused destroying evidence or attempting to subvert witnesses.

If a person is bailable as of right, the question may fairly be asked how far these tests are, or should be, relevant.

Where it grants bail, the court may release the accused person on his own recognisance, or may require him to find sureties for such amount as it thinks fit. It may, in addition to, or instead of, requiring sureties, impose a condition that the accused report to the police at specified times. But it has no statutory power to impose any other conditions.

CRITICISM OF REMAND PROCEDURE

From time to time uneasiness and dissatisfaction are expressed about the practice of the courts in relation to remands. It has been alleged, for example:

- (a) That remand periods are too long. However, it should be realised that under the Summary Proceedings Act no person can be remanded in custody for more than eight days without his consent.
- (b) That courts are over-cautious in the exercise of their discretion to grant bail; the State, in its prosecuting capacity, places too much emphasis on its own convenience and opposes the granting of bail on insufficient grounds.
- (c) That the conditions fixed for bail are often, in effect, a denial of the opportunity to gain release on bail.
- (d) That there is discrimination at official levels on racial and social grounds.

In any investigation of allegations of this nature, the real difficulty is to get reliable data. No official records are maintained in a form that discloses all the circumstances of individual cases. Nor is it practicable to conduct a survey throughout the country in sufficient depth to record why every remand was sought and all the circumstances of offences and offenders that were taken into account by the Courts in exercising discretion in the fixing of bail. However, a survey of some aspects of remands was made at a centre where a substantial amount of criminal work is dealt with. The survey covered all remands granted in both the Magistrate's and Supreme Courts in that centre during the year 1964. To supplement this investigation, a survey was made of remand prisoners held in Auckland, Wellington, and Christchurch Prisons between 7 August and 3 November 1967.

The 1964 survey disclosed the following position:

Length of Time on Remand for Cases Disposed of in Magistrate's Court

Total number of persons remanded ..	840
Number remanded in custody ..	268
Time spent in custody on remand:	
Not exceeding 1 week ..	203
2 weeks ..	54
3 weeks ..	7
1 month ..	2
2 months ..	2
	<hr/>
	268

A complete examination of all cases where the period of remand exceeded three weeks was not practicable. However, the information available in these cases did disclose circumstances which suggested good reasons for the length of the remand. As far as this data goes it does not indicate a general tendency to long remands.

Cases Tried in Supreme Court—Awaiting Trial

Total number of persons committed for trial ..	74
Europeans	64
Maoris	10
Bail allowed	59
Bail not allowed	15
Time spent in custody on remand:	
Not exceeding 1 month ..	2
2 months ..	6
3 months ..	4
Exceeding 3 months ..	3
	<hr/>
	15

Following Appeal Against Sentence of Imprisonment or Other Form of Detention

Total number of appeals	51
Number who did not seek bail	40
Time spent in custody awaiting hearing:	
Not exceeding 14 days	5
1 month	29
2 months	6

The majority of these appeals were against the severity of the sentence imposed—it was the length of the sentence that was the real issue. Under these circumstances there is not the same need for concern as there is where a person is held in custody before his guilt is established.

IS BAIL REFUSED TOO OFTEN?

The figures quoted above of persons remanded in Magistrates' Courts show that bail was granted in more than two out of three cases where remands were sought. This figure, however, stands in need of further analysis. One important but unanswerable question is how many of the 268 persons remanded in custody would have appeared to answer the charge had they been released on bail, would not have attempted to subvert the course of justice and would not have committed any other offence while at liberty. Every such case represents a failure of our system.

We cannot hope to achieve perfection, but the figures obtained in the survey give some support to the suggestion that the Court may be too conservative in exercising its discretion to release on bail. One complication which makes an easy answer impossible is that, particularly where the defendant has a criminal record, there is, in the opinion of experienced magistrates, often a real risk that he may offend again if he is released. This is not something that can simply be set aside as irrelevant and inconsistent with the presumption of innocence, unless we are prepared also to reject the long-standing view of the Courts that this is, indeed, a good reason for refusing bail.

Of the number in our survey who were released on bail (572) only two ultimately failed to appear at the hearing.¹ On the other hand, unless the Court is possessed of a superhuman wisdom which it would be the first to disclaim, the figure suggests that many who were not released on bail would also have appeared.

Can we not afford to take slightly greater risks in the interests of personal liberty? The cost of finding a number of fugitives from justice cannot be ignored, but it must be balanced against the substantial cost of holding prisoners in jail. There is, too, this important consideration. The State is stronger than the individual and it can afford to be more generous.

HOW FAR IS THE RIGHT TO BAIL A REALITY?

This question arises whenever an accused person cannot arrange for the surety, or sureties, which the Court has required when fixing the terms of bail. A surety must bind himself to forfeit such sum as the court fixes should the accused person fail to answer to his bail. It may be necessary for a surety to establish not only that he is of good character and a fit person to accept the responsibility of suretyship but also that he has the means to meet the bond if the person charged defaults in his obligation to appear before the court at the appropriate time. It is not surprising that there are occasions when an accused person encounters difficulty in finding friends with the requisite qualifications who are willing to accept the obligations of a surety. These

¹This does not mean that the other 570 all appeared in accordance with their bond. Some would have had to be found by the police after defaulting.

persons, unless the court relaxes the requirements for sureties, must remain in custody.

Figures obtained in the survey covering the Magistrate's Court are:

Total number allowed bail	..	..	572
On own recognisance	..	299	
With surety or sureties	..	273	
Bail allowed with sureties but not arranged	..	54	

One in five of those allowed bail subject to providing sureties could not meet the terms of the bail and had to remain in prison. Although the precise figures could not be obtained, it is almost certain that some of this number were "bailable as of right". It is true that sureties provide an added guarantee that the accused person will appear to answer the charge, but one may wonder if insistence on the provision of sureties was justified in all cases.

The survey of remands in the Supreme Court in the centre concerned showed:

Total number of persons remanded	..	74
Bail allowed:		
On own recognisance..	16	
With sureties	..	43
Number who could not arrange sureties	..	6

Although the numbers are small, 15 percent of those who were granted bail in the Supreme Court could not gain their liberty merely because they were unable to arrange sureties.

The 1967 survey disclosed that during the three-months period covered, 49 defendants who had been allowed bail by the Court were held in custody. Five did not want bail. The reasons given in the other 44 cases were:

(1) Knew no one with sufficient money	..	..	10
(2) Knew no one prepared to trust him	..	..	18
(3) Knew possible surety but could not locate him	..	..	9
(4) Tried someone but was refused	..	..	5
(5) Other reasons	..	..	2
			—
			44

It is of interest, though not statistically significant, that in one of these cases a parent refused to act as surety for his son on the ground that the son would be "better off" in prison. This suggests the possibility that some young people are held in custody awaiting trial because of a parent's attitude—an attitude which may, or may not, be reasonable. In another case one person willing to act as surety was found, but two sureties had been required.

RACIAL DISTINCTIONS

The following figures were obtained from the survey:

Granting of Bail	Europeans	Maoris	Islanders
Number remanded ..	.. 670	148	22
Number allowed bail ..	.. 460	95	17
Percentage allowed bail	.. 69	64	77

The figures do not take into account one factor which, of course, is of significance to the Court when deciding whether it is proper to allow an accused person to be released on bail—his previous criminal record. However, there is no reason to believe that the records of Europeans would be so much worse than those of Maoris, or vice versa, that the figures are valueless.

Requirements for Sureties	Europeans	Maoris	Islanders
Number bailed on own recognition .. ..	.. 239	51	9
Number bailed with sureties ..	221	44	8
Percentage where sureties required .. ..	.. 48	46	47

There is no indication here of any discrimination against Maoris. We cannot, of course, argue that because discrimination between persons of different race does not exist in the remand practice of the Courts of one city it does not exist elsewhere. All that the survey shows is that there is no discrimination in this town. It would be useful to examine the practice in various other Courts, including one at least in a district containing a high percentage of Maoris.

However, when we come to consider the number of cases where a person granted bail could not find sureties the position is very different.

	Europeans	Maoris	Islanders
Sureties arranged ..	.. 185	27	7
Sureties not arranged ..	.. 36	17	1
Percentage where sureties arranged .. ..	.. 16	39	12

It seems much harder for Maoris to arrange sureties than it is for Europeans. The Court does not discriminate on racial grounds in arriving at its decision over bail, but in the effect of these decisions Maoris are at a distinct disadvantage.

The 1967 survey, although it is confined to cases where bail could not be arranged, tends to confirm this finding. Sixteen Maoris, 32 non-Maoris and one Islander were allowed bail but not released. The ratio of Maoris to non-Maoris is almost identical with the 1964 figures.

DISTINCTIONS ON SOCIAL GROUNDS

Granting of Bail	Occupational Class		
	Professional	Skilled	Unskilled
Number remanded ..	35	240	565
Number allowed bail ..	33	194	345
Percentage allowed bail ..	94	81	61

The figures show that the better the social position an accused person holds, the greater is his chance of being allowed bail in the event of his arrest. Several factors must be borne in mind in considering the data.

First, the past criminal records of the persons charged have not been taken into account. It is unlikely that many persons shown in the professional class would have criminal histories, and one would expect that the vast proportion of hardened criminals would appear in the unskilled occupational group. Most "professional" people and the majority of those shown in the "skilled" group would have a stake in the community. The likelihood of their attempting to evade justice is much less than it is in the case of the person who owns nothing and might well feel that he has nothing to lose. This is not a case of considering whether too much privilege is extended to the rich. Our aim must be to ensure that the maximum number who can reasonably be released on bail, irrespective of their occupational class, are allowed their liberty.

Requirements for Sureties

	Occupational Class		
	Professional	Skilled	Unskilled
Number bailed on own recognition ..	24	95	180
Number bailed with sureties ..	9	99	165
Percentage where sureties required ..	27	51	48

Greater reliance by the Court on the personal bond of a member of the professional occupation group is apparent. This is consistent with the view that sureties to the accused person's bond are an added assurance that he will attend. The professional person's ties and the greater difficulty he would have in hiding his identity, are a greater guarantee of his honouring his bond than the backing of sureties.

Ability to Arrange Sureties

	Occupational Class		
	Professional	Skilled	Unskilled
Sureties arranged ..	7	92	120
Sureties not arranged ..	2	7	45
Percentage where sureties not arranged ..	22	7	27

The figures do not support the assumption that professional people would seldom have difficulty in providing friends of substance who would be willing to act as sureties to their bail. However, the figures, particularly in respect of the professional group, are too small to draw any worth-while conclusions. It could have been that the two people in the professional group who remained in custody did so by personal choice. The unskilled worker is at a marked disadvantage in comparison with members of the skilled worker group. Assuming that most of the Maoris allowed bail with sureties were from the unskilled group, the figures indicate that Maoris have less prospect of arranging sureties than the European members of their occupational group.

RESULTS OF HEARING WHERE ACCUSED HELD IN CUSTODY

So far we have looked at the question of the granting of bail by the Court in the pre-trial period. Let us now consider what eventually happened to those persons who lost their liberty at this time and were detained in a prison. These figures were gained from the survey:

Magistrate's Court

Persons held in custody on remand—

Not convicted at their trial	25
Convicted but sentenced to other than imprisonment or other form of detention ..	114

Supreme Court

Persons held in custody awaiting trial—

Not convicted at their trial	6
Convicted but sentenced to other than imprisonment or other form of detention ..	1

On the basis of this survey it appears that throughout New Zealand in 1964 something like 300 persons may have been held in prison on remand when they were not guilty of the offence for which they were detained. Many indeed may have been lucky to escape conviction; nonetheless the figure is disquieting. The survey revealed that only two persons successfully absconded from bail during the year, yet 31 were held in custody only to be found not guilty.

One hundred and fifteen persons in the Courts covered by the survey were convicted following detention on remand awaiting trial but were not sentenced to imprisonment or other form of detention. This is a large number, but we must be careful in our deductions. The Court will always take into account the fact that an accused person has spent a period of time in custody before sentence. In many cases, where a period of imprisonment or other detention is imposed, the Court will state that it has reduced the period of detention which otherwise would have been fixed. In other instances the Court will bear in mind that an

offender has already spent a period in prison on remand, and for this reason impose a sentence of probation or a fine where otherwise a prison sentence may have been imposed. However, even when full weight is given to this factor, it may well be that too many people are spending time in jail on remand where the Court ultimately decides that the appropriate punishment on conviction for the offence charged does not require deprivation of liberty.

REFLECTIONS ON THE BAIL SYSTEM

There is cause for reflection over the operation of the law with regard to the release on bail of persons charged with offences, but it is impossible to draw firm conclusions without further and more detailed studies. The figures gained by the limited survey of the operation of those statutory provisions by the Courts give no reason to suggest grave flaws in our system. Nor do they give cause for complacency to those concerned with preserving or protecting the inherent right to personal liberty of a citizen not convicted of a criminal offence.

It is difficult to avoid the conclusion that when considering the granting or fixing of bail, the Court seeks a very high degree of probability that the accused person will appear to answer the charge. It is in keeping with principles of justice that, in the absence of other factors, bail should be allowed unless there are positive grounds for believing that the offender will not appear if bailed, and the Court should be prepared to take calculated risks. There will be a hard core of persons who could not reasonably be trusted to appear and there will, of course, be the cases where the offence is too serious for the Court to contemplate bail (e.g., murder), or where there is a serious risk of danger to the general community, or to witnesses, if the accused person is allowed his liberty. Just how large a proportion of cases this applies to, we do not know. But there may be room for greater tolerance in favour of the person charged and for a greater number to be allowed their liberty during the period of remand.

NEED FOR SURETIES

The concept that a person's liberty while awaiting trial should depend on whether he or his friends have money is traditional in New Zealand but is open to objection. There seems little to commend the practice whereby an accused person binds himself to forfeit a certain sum fixed by the Court if he should fail to appear before the Court on the day of the hearing. If the person charged has no means, the bond is worthless, but it would be unjust to deny that person his freedom merely because he has no means. It might be better to make it an offence for an accused person to fail to appear at the time and place directed by the Court at the time of his release from custody. Greater discretion could then be given the Court in determining the appropriate penalty for failing to comply with the obligation.

It is now quite common for the Court to require a person released on bail to report periodically to the police during the period of the remand. This is, no doubt, a sensible requirement in many cases and it could hardly be suggested that it imposes an unnecessary or serious restriction on the liberty of the accused person. There may well be value in empowering the Courts to impose other conditions, and if they had this power, bail might be granted more freely. The question deserves the attention of the Legislature.

It can be argued that sureties are an added assurance that a defendant will honour his obligation to appear before the Court. No doubt, some people are more likely to comply with their obligations through a desire to keep faith with a friend than through respect for the law or to maintain their own integrity. Again it is claimed that sureties are often in close contact with the person charged during the period of remand, and to protect their own interests, will notify the authorities should the accused person show indications of evading his obligations.

The survey showed that of the 273 persons released on bail with sureties, the sureties sought release from their responsibilities in only three cases. There were two cases of accused persons successfully absconding from bail—both had been released on their own recognisances without sureties.

The question that must be asked is how many who were held in bail because of inability to find sureties would have absconded if they had been released without providing sureties. In the nature of things the question is unanswerable, but we may fairly wonder whether the absence of sureties would have made a difference in many of these cases.

The Maori offender finds the need to provide sureties a greater restriction on his liberty than does the European. More than one-third of Maoris released on bail requiring sureties were unable to meet the conditions of bail. Yet there is no evidence that Maoris are less reliable than Europeans in complying with their obligations to the Courts. Ninety-five Maoris were released on bail in 1964 from the Magistrate's Court where the survey was conducted and all appeared to answer the charges. Fifty-one were released on their own bonds, and in 44 cases sureties were provided.

The justification for retaining the present form of the statutory provisions for sureties to bail can be questioned. Perhaps the provisions could be retained in modified form to permit release in appropriate cases, subject to the person charged being under the control of a specified person or persons who have indicated willingness to accept that responsibility.

There is one further important reflection on the information obtained. Bail is originally fixed by the Magistrate or Justice. Theoretically it is for him to accept the surety, but in practice it often does not happen. Although Magistrates are busy people, it is a shortcoming of the system if they habitually lose touch with a case once they fix bail. It may well be that in many of the cases covered by the two surveys, the Court might

have relaxed the requirements for suretyship if it had been informed of difficulty in arranging bail. Often the root of the trouble may be excessive caution by the police in pressing for a surety where there is really no serious objection to bail. There is room, too, for believing that a surety is sometimes rejected without the Court having knowledge of the rejection because the person offering to act as surety is not acceptable to the police.

REMAND IN CUSTODY

To the prison administration, remand in custody can be a nuisance. Remand prisoners are awaiting either trial or sentence; in either case they cannot receive the same treatment as sentenced prisoners.

They have various privileges—visitors every day of the week except on Saturday, Sunday, and statutory holidays; the right to wear their own clothes if they are fit for use; and the right (rarely exercised) to have their food brought in from outside the prison. They are allowed their own shaving gear and smoking requisites. "So far as is consistent with discipline and the good order of the institution, the Superintendent may allow any inmate awaiting trial to have in his cell any articles that were in his possession at the time of his admission and are not required for the purposes of justice or reasonably suspected of forming part of property improperly acquired by him."²

This regulation at times causes considerable acrimony when an inmate's money is held by the police. The remand prisoner almost invariably engages counsel who wants to know the prisoner's financial assets. Sometimes it is difficult to ascertain his resources until the police are satisfied that the money has been legally acquired. If doubt persists, the inmate may have to apply for legal aid, or expect counsel to act in the hope of proving his right to possess the money.

Inmates awaiting trial must as far as practicable be kept apart from other inmates. So far as circumstances will permit "inmates awaiting trial and committed in the same case shall be kept separate and shall not be permitted to communicate with each other".³ Persons committed for default or contempt are also to be segregated, as are inmates under the age of 21 years, whether awaiting trial or sentence.

The segregating regulations are counsels of perfection and can seldom be rigidly enforced. Prison designers in days gone by were more interested in security than in segregation, with the result that in few of our major institutions is it possible to avoid communication of one sort or another. For example, the remand wing has to be cleaned—by convicted prisoners. These people are only too happy to bear messages from one remand prisoner to another or from a convicted prisoner to a person on remand.

²Penal Institutions Regulations 156.

³Penal Institutions Regulations 155 and 157.

Whatever attempts are made to isolate the under 21-year-old remands from others, they are rarely successful. In view of the incidence of under-21 crime, it is doubtful whether the 21-year official barrier remains realistic.

Every inmate awaiting trial is afforded all reasonable facilities for writing or receiving letters. A confidential written communication prepared as instructions for the legal adviser of an inmate awaiting trial may be delivered personally to the legal adviser without censorship by the prison superintendent unless the latter has reason to suppose that it contains matter not relevant to the case. Any interview between an inmate awaiting trial and his legal advisers may be held in the sight, but not in the hearing, of a prison officer.

Inmates on remand for trial or for appeal who volunteer for labour may receive an issue of one ounce of tobacco a week, depending on their conduct and industry. Should their remand be extended, they may be allotted earnings from the beginning of the second month, and they may also draw from the canteen.

While the superintendent has control over the hirsute state of convicted persons, he may not order the cutting of hair, beard, or moustache of a remand prisoner, except on the ground of health or cleanliness.

Section 37 of the Mental Health Act gives power for the detention of an inmate on remand in a mental hospital so that he may be kept under observation.

All these regulations provide that the inmate on remand is to be protected from contamination, prevented from offending, and assured of justice. In practice, it is often difficult to carry out the injunctions to the letter. In some respects the prisoner on remand is in a worse state than his convicted fellow prisoner.

Apart from books and playing-cards little leisure activity is offered them, and they have to spend their time as best they can. The comfort of their situation depends greatly on the weather. Before the convicted prisoners are brought back for lunch the "remands" are returned and locked up—giving them three hours of morning freedom. The same routine takes place in the afternoon. Unlike convicted prisoners, they are not allowed to engage in any of the prison's evening activities. Thus they spend an average of 18 hours a day locked in their cells.

Their visitors, armed with parcels, are a constant challenge to the vigilance of prison staff, but it is more than possible that some contraband, including money and weapons, is passed secretly from visitor to inmate. It is little wonder that the prison administration regards remand custody as a nuisance and a security risk, and longs for the establishment of separate remand centres in the larger cities.

CHAPTER 13

SOCIAL TRENDS AND OUR RESPONSE

The preceding chapters have dealt with various facets of crime in New Zealand, focussing particular attention on those offences which arouse public concern and on those issues about which the public needs to be informed. For the most part, the facts are left to speak for themselves, although there is some speculation and we have drawn some inferences. There has been no assertion that we have the answers. The issues raised can be solved only by thought, research, and imaginative but responsible experiment.

We have sought to place crime and criminals in perspective as part of a society, and in some ways a product of it. We have also pointed to trends within our community that are important in relation not only to penology but also to the very structure and future of society. Chief among them is urbanisation, a migration from country to city or from areas of low economic growth to areas of rapid growth.

This is a world-wide phenomenon. The process is not in itself new, but it is without precedent in its extent and speed. In 1800 only 1.7 percent of the total world population lived in cities of 100,000 or more inhabitants; in 1950 cities of this size accounted for 13.1 percent of the world's population. In New Zealand the population of the 18 urban areas rose from 739,243 in 1926 to 1,671,891 in 1966—in other words they more than doubled their size in 40 years—and the proportion of the population living in them rose from 51.6 percent to 62.5 percent. Auckland alone increased its population from 287,000 to 548,000 in the 21 years between 1945 and 1966.

It has been traditional to denigrate urban life and praise rural ways as peaceful and law-abiding. But despite the rhetoric of poets and moralists there is crime in rural areas. Some of it is absorbed by local custom. In the past much rural offending was dealt with informally by the victim or the community. The boy who stole would be chastised either by the person from whom he stole, or by his father. Sexual misbehaviour would be dealt with by the community. Perhaps in some areas this may still be true.

Much, of course, depends on the nature of the particular community. Some behaviour which is permissible according to Maori custom may be an offence under European law. The difference results from each group's set of values. The Maori is not nearly as preoccupied by the

concept of private ownership of chattels as the European. His set of values is based on tradition, on personal merit, and on a cultural heritage; by contrast the European often bases his values on material possessions. This is, of course, a simplification, and it will become less true as the races intermingle more and more.

But it is still true that theft and car conversion are not regarded as seriously in a Maori community as in a European one. Sexual mores amongst Maoris also have a slightly different basis. Sexual promiscuity is permissible among young people, but it is a gravely-regarded offence for an adult to interfere sexually with a child. The traditional Maori attitude towards common assault is that it is a matter for the community to deal with, but this attitude is also dying. Traditional mores are modified as Maoris move into towns, and as the impact of European culture reaches even the most remote districts. All this must be borne in mind in any comparison between Maori and non-Maori rates of offending.

Urbanisation has both good and bad effects, but it is with the bad effects that we are chiefly concerned. Transition from a small, often closely-knit community, with its supporting and controlling ties of custom and relationships, to the much larger impersonal and unwelcoming city with its attendant difficulties of finding work, accommodation, and recreation, is difficult enough in itself. But the difficulties are multiplied when the migrant is a young Maori or Pacific Islander. A recent publication¹ makes it plain that Maori migration, like European migration, is prompted by economic pressures and opportunities but, unlike the European, the Maori is often ill-equipped to take advantage of the opportunities available. His lack of education and vocational training,² makes it easier to obtain labouring or factory work than more highly-paid, skilled work. A relatively low income, together with high city rents, makes it difficult for him to obtain reasonable accommodation. Loneliness and the anonymity of city life are especially difficult for the Maori who is used to a full community life.

Crime is often a product of temptation. When new temptations are suddenly presented to a young person, who is often without friends or family to proffer advice, and who is already bewildered by a new code of behaviour, it is hardly surprising that he should sometimes succumb.

Schemes such as the pre-employment courses run by the Maori Affairs Department in conjunction with technical institutes help to ease a transition from rural to urban living. The courses provide an organised entry to city life, a basic training in money handling, business English, ways of finding work and accommodation, direct help

¹*The Maori in the New Zealand Economy*. Department of Industries and Commerce, 1967.

²See *Horizons of Unknown Power: Some Issues of Maori Schooling*, John E. Watson, New Zealand Council for Educational Research, 1966.

in getting a worth-while job, knowing where to go for help and advice, and a continuing link with other young Maoris through hostels and social and sporting clubs. Such a highly desirable scheme is of great benefit to those who are able to take part in it, but the 100 or so young people who are so helped each year are only a handful of those, Maori and non-Maori, who could similarly benefit.

Maori pre-apprenticeship courses operated by the technical institutes in co-operation with the Maori Affairs Department cater for about 200 students each year in eight or nine trades, and apprenticeship schemes are also run by the Department in conjunction with the Labour Department. But these reach only a small proportion of the boys who are capable of entering a skilled occupation.

Opportunities of this kind are needed not only for young Maoris but also for some other young people coming from the country to the cities. They are needed, too, for those who are vocationally under-equipped or who are not using their potential skills or intelligence, and for young people who cannot employ their leisure adequately and constructively in a law-abiding manner. Such social problems affect the whole community—and the community as a whole must provide a solution or bear the consequences of apathy and inaction.

One of the few certainties of criminology is that many delinquents and criminals are the product of broken homes, and of homes where, for other reasons, there is only one parent. In this context, and also because it is another example of a change in attitudes and patterns of behaviour on the part of young people, the problem of illegitimacy deserves mention.

The increase in the incidence of illegitimacy is one of the more conspicuous social phenomena of recent years.³ The number of New Zealand children born out of wedlock has been increasing steadily and substantially over the last few years, as the following figures show:

1962 ..	..	5,242
1963 ..	..	5,698
1964 ..	..	6,189
1965 ..	..	6,554
1966 ..	..	6,960

The proportion of illegitimate births to total births has also been rising, but it is dangerous to draw inferences from this factor alone. Perhaps the least unsatisfactory index of illegitimacy within the community is the number of illegitimate births in a given year for every 1,000 unmarried women between 15 and 44. This information is available for non-Maoris for each census year up to 1961. From 1901 to 1936 the number was almost stationary at between nine and 10 with a decline to 6.71 in 1936. In 1945 it was 11.67, and it rose thereafter to 24.14 in 1961.

³See Ex-Nuptial Births, Supplement to the Monthly Abstract of Statistics, January 1967.

One of the principal ways in New Zealand of coping with ex-nuptial births has been adoption. However the number of parents in the age groups where most adoptions occur has not been keeping pace with the number of children available for adoption. To some extent this has been masked by a higher proportion of married couples coming forward to adopt children. Nevertheless, there have been a number of reports of infants being kept in hospitals or other institutions or in placements longer than is desirable.⁴ The illegitimate child who is passed through a series of foster homes or institutions is handicapped from the start in making a communally acceptable adjustment to life in society. It is this group that yields some of our most difficult offenders.

We still do very little to assist the unmarried mother who wishes to keep her child. Often these children are placed in foster homes as a temporary expedient while the mother seeks work to enable her to support herself and the child. Sometimes it is several years before a decision is made to place the child for adoption. Sometimes the Child Welfare Division must intervene for the child's protection and assume guardianship. Often the mother marries later on and she and her husband adopt the child. In all these cases the child is subject to strains which more fortunate members of the community do not have to face, and it is not altogether surprising that some rebel in adolescence and that their rebellion takes the form of antisocial or illegal behaviour.

It has been said often, perhaps so often as to lose impact, that positive social action to prevent offending must begin in the home and in the school. This is not to imply that teachers and parents are to be made scapegoats for delinquency. However, we cannot escape the consistent evidence of case histories and research, such as those quoted in this book, that insufficient parental care and affection, an unacceptable code of behaviour derived from parents or peers, difficulties in learning that eventually become inability to learn, and lack of training for work and leisure, combine to produce a sense of inadequacy, frustration, and resentment. This is either turned inward in self-destructiveness, or outward in aggressive, defiant behaviour that flouts the laws of society.

The chapter on dishonesty points out that the adult first offender is the least likely to reoffend. On the other hand, although most delinquent children do not persist in offending, many graduate from simple delinquency to more serious criminal behaviour. If we could prevent juvenile delinquency, we would dramatically reduce the total of crime. This being so, we must realise the urgent necessity of training those with responsibility for children to cope with their responsibilities.

Most New Zealand parents are well aware of their obligations and are anxious to do the best they can for their children. But too often they lack reliable advice and guidance when they need it. Family life education in secondary schools is a worth-while development, and its

⁴E.g., *Evening Post* 19 July 1966, "30 Babies have no Homes".

adoption in suitable form in all schools is to be encouraged. It is significant that the Young People's Advisory and Action Committee of the National Youth Council has recommended to Government that a course of citizenship training be introduced into all secondary schools as a core subject.⁵

Teachers work hard, often under difficult conditions, to cope with the problems presented at the school level. The special difficulties encountered by slow learners and other minority groups pose additional and highly individual tasks. There are also children who require careful personal attention because they exhibit delinquent tendencies or have been brought before the Courts for misdemeanours. Principals and senior teachers devote as much time as possible to such cases and they call in the assistance of agencies outside the school such as the Department of Education's Psychological Service, visiting teachers, and the Child Welfare Division.

Many secondary schools have now become extremely large, and assistance in guidance work is required by principals. Guidance counsellors, as recommended by the Currie Report, have been appointed in some schools, mainly large metropolitan schools, or schools with a high proportion of Maori pupils. More are needed.

Towards the end of 1967 the Education Department published a bulletin entitled *Social Education in Secondary Schools*. In its foreword the Director of Secondary Education says: "Many principals now feel that the onus is on the secondary school to contribute towards helping prepare young people for citizenship, marriage, parenthood, and use of leisure. . . . There is a growing need for this contribution to be organised more formally."

Whatever we might wish, social measures in themselves will never eliminate crime, although they may reduce it. Adequate penal measures will always be needed. The old negatively deterrent approach has been tried and found wanting. The Justice Department's anxiety to achieve as much success as possible is reflected in the changing forms of sentence and treatment that really began with the Criminal Justice Act 1954. Hard labour, reformatory detention, corrective training, preventive detention—all of these variations for imprisonment have been abolished, except the last, which can now be imposed only in limited cases.⁶ The maximum term of Borstal training was reduced from three to two years in 1962;⁷ a detention centre for youths was established in 1961; an open Borstal at Waipiata was established in 1961. Separate parole boards for Borstals were first established in 1961,⁸ the membership including prominent local residents. A Prisoners' Aid and Rehabilitation Society Associate Scheme has been developed to link community and inmate through regular visiting and developing personal relationships.

⁵National Youth Council. Young People's Committee Report on Citizenship Training, 1967, p. 7.

⁶For persistent sexual offenders. See Criminal Justice Amendment Act 1967.

⁷Criminal Justice Amendment Act 1961.

⁸Ibid.

In March 1964 the classification of adult first offenders began at Wi Tako prison, located 17 miles from Wellington. Adult males who have been sentenced to prison terms of six months or more and who are not potentially dangerous, and some prisoners serving shorter sentences, are sent to Wi Tako. There a classification board, composed of specialist officers and senior institutional staff, thoroughly studies and reviews each case. A programme is planned for each prisoner based on his individual needs and circumstances and in the light of these a decision is made on the institution in which he should serve his sentence. In fact, most first offenders sent to Wi Tako continue to serve their sentences there.

Home leave for selected persons serving their first prison sentence was introduced in 1966, and more liberal use has been made of compassionate leave and pre-release parole. Release-to-work is well established under a statutory scheme⁹ and is specifically designed to aid rehabilitation.

Periodic detention centres operate in four cities, and the original scheme has been extended to include certain categories of adults.¹⁰ Pre-release hostels have been developed to ease the transition from institution to community.

Probation hostels are an important tool in probation case work, and in suitable cases they may prevent any need for further institutional treatment. The probation service has expanded considerably over the last five years. At the end of 1960, 63 probation officers dealt with 3,021 probationers and parolees. By December 1965, 97 officers had a total caseload of 4,798 probationers and parolees.

The variety of sentences available to the Court is indicative of two things—first, that no one treatment is universally applicable and effective and, second, that the administration is keenly aware of this fact, and of the continuing high rate of recidivism.¹¹

The Courts are becoming increasingly aware of the fact that although institutional treatment is sometimes inevitable, it should be a last resort, to lessen the cost to the community of keeping men in prison and to avoid as often as possible the difficulties inherent in trying to rehabilitate an inmate into the community. With the first offender, there is the additional motive of minimising his contact with the criminal sub-culture.

The increased use of fines and probation and the new concept of periodic detention for adults as well as for adolescents show how the law is moving away from the simple "deterrence and retribution" approach to dishonesty; the culprit is given an opportunity to pay off the debt he owes to society, and, under supervision, to work out his own salvation.

⁹Penal Institutions Amendment Act 1961.

¹⁰Penal Institutions Amendment Act 1966.

¹¹In 1964, the Department of Justice issued *Crime and the Community*, published by the Government Printer. Many of the developments mentioned in this chapter are discussed more fully in that publication.

One very recent development is the discouragement of short prison sentences given by section 10 of the Criminal Justice Amendment Act 1967. The trouble with the short prison sentence is that in most cases it has the disadvantages of imprisonment without offering the opportunities. It is long enough to contaminate, but too short to rehabilitate. It takes up the time and energies of prison officers that could be put to much more constructive use. Finally, its deterrent effect is unproven.

On the other hand there is no reason for supposing that the short sentence can never be of value or that with certain types of offender the threat of imprisonment cannot be salutary. The problem is to encourage the greatest possible use of penalties other than imprisonment without tying the hands of the Courts.

To this end the law now provides that no Court is to sentence any person to imprisonment for less than six months unless, having regard to all the circumstances of the case, including the nature of the person's offence and his character and personal history, the Court has formed the opinion that no way of dealing with him other than imprisonment is appropriate. The provision is based on a section first enacted in 1939 that restricts the imprisonment of persons under 21¹² and it has some analogy in spirit with 1967 English legislation relating to suspended sentences.¹³

The effect of the new section is unlikely to be dramatic. By and large, as one might expect, Judges and Magistrates have tried to avoid imposing short prison terms except where imprisonment is considered necessary. Were it not for the feeling that the community demands imprisonment in certain cases, the short-sentence offender and the adult first offender generally might more rarely have been seen in prison. The very substantial increase in the maximum fines for many minor offences¹⁴ and the setting up of more work centres (periodic detention) for those coming before the adult Courts will increase the alternatives available. However, the real purpose and value of the new provision will be to state clearly and concisely the policy of Parliament and to guide, exhort, and encourage the Courts.

As already mentioned earlier in this chapter, the Criminal Justice Amendment Act 1967 abolished the sentence of preventive detention except for sexual offenders. One likely effect is that more use will be made of the long finite sentence for persistent offenders. However, all such sentences are now to be subject to review. The 1967 Act provides that where an offender is serving a finite sentence of not less than six years the Prisons Parole Board is to consider his case after he has served a minimum period of three years and six months imprisonment and once annually thereafter. This has been done in the expectation that a special kind of hostel will be established for offenders in this category.

¹²Now Criminal Justice Act 1954, s. 14.

¹³Criminal Justice Act 1967 (U.K.), ss. 37-42.

¹⁴Police Offences Amendment Act 1967.

If the best decisions are to be made, research is essential in order to evaluate existing forms of treatment and to suggest areas ripe for basic investigation. Such areas of activity are obvious in every chapter of this book. However, proper research programmes take time and require people qualified to carry them out—people who are in short supply.

Meanwhile we have the existing treatments. How can they best be used? Again the answer is two fold. The first essential is competent staff. The prison and probation services must have more officers who are qualified, and we must seek and retain recruits who can be trained in a particularly challenging area of social work.

It is meaningless to talk of psychotherapy and group therapy when there are no trained psychotherapists or psychologists who can perform such skilled tasks. It is equally futile to talk of counselling, trade training, or remedial education when there are not enough trained staff to do what needs to be done. Thus recruitment and training are basic to any programme for rehabilitating our criminal population. In this context the establishment in 1967 of the cadet scheme for prison officers is significant. It is also significant that selected officers have been sent to the University of Auckland to study for the diploma or the certificate in criminology, recently developed courses within the law faculty.

The second part of the answer lies in skilled sentencing by the Courts to serve individual cases. Wise sentencing, because it seeks to control future events and not merely to pass judgment on what has happened, is a difficult task, demanding both skill and knowledge. Yet paradoxically those whose duty it is as Judges or Magistrates to impose sentences have had no special training before their appointment to the Bench that would help them to perform the task.

Recognition of this fact has led to the introduction in several countries of what are known as sentencing institutes or sentencing conferences. They are essentially meetings of Judges and Magistrates to discuss among themselves and with experts in various fields problems relating to the sentencing of offenders. One aim is to reduce disparity in the penalties meted out by the various Courts. But the idea behind the sentencing conference goes much further and is to improve the general quality of sentencing.

The United States introduced legislation in 1958 empowering the Judicial Conference—the body of Federal Judges—to establish institutes to study, discuss, and formulate objectives, policies, standards, and criteria for sentencing persons convicted of offences in Federal Courts.¹⁵ These institutes have included practising lawyers, jurists, and other experts as well as Judges, the aim being that all those who can make a special contribution should work together. In Canada there have been

¹⁵During his visit to New Zealand, Mr Torsten Eriksson mentioned that sentencing conferences began in Sweden in the early 1950s.

sentencing conferences in 1962 and 1964, the emphasis being less on uniformity than on criminology and penology as a means of improving the sentencing process.

In the United Kingdom the Committee on the Business of the Criminal Courts (the Streatfield Committee) in 1960 made recommendations designed to secure greater uniformity in the information being supplied to Courts. The Committee also pointed out the desirability of having better information available concerning the purposes that various sentences were designed to achieve and did, in fact, achieve. Early in 1966 the Lord Chief Justice, Lord Parker, convened a conference which was attended by a representative gathering of Judges. The Judges divided into panels which were invited to consider an appropriate sentence in hypothetical cases. The results were compared and discussed.

In September 1967, a seminar on sentencing was held in Sydney for New South Wales Judges and Magistrates. There were two sessions, and it was reported that the Judiciary was so impressed that it arranged a third for the end of October.¹⁶

The possibility of holding a similar conference in New Zealand was first suggested by the Department of Justice in its Annual Report to Parliament in 1961,¹⁷ and was raised again in *Crime and the Community*. A conference of Judges and Magistrates was eventually held at Wellington on 28 October 1967, under the chairmanship of the Chief Justice. Four members of the Department of Justice were present. There are obvious limits to what can be achieved in one day, but there is no doubt that the conference was a most promising beginning.

What is needed is to throw light on all those considerations which lead us closer to the right sentence. What is the "right" sentence? This of course is one of the most difficult problems of criminal justice. In the past the problem was solved more or less on a tariff basis, whereby the sentence was chosen according to certain criteria such as the offence, character, and previous convictions of the accused, together with a consideration of any aggravating or mitigating circumstances and the overall need to protect society.¹⁸ Although this is still accepted as an adequate empirical basis, its adequacy is being increasingly questioned and the range of relevant factors that the Courts take into account is widening. It is a commonplace to say that in deciding upon a sentence the Courts have regard to all the circumstances of the offence and the offender. The individualising of punishment has already been carried a long way in New Zealand.

What still poses an intractable problem is the balancing of these circumstances—the criteria for determining what considerations should be paramount. How much emphasis should be placed on the individual

¹⁶Sydney Morning Herald, 16 October 1967.

¹⁷Report of the Department of Justice for the year ended 31 March 1961. Government Printer, 1961.

¹⁸Hall Williams, J. E., *Notes on the Report of the Streatfield Committee*. The British Journal of Criminology. Vol. 2, No. 1, 1961, p. 73.

needs of the offender, how much on the need for deterrence, and how much on society's call for vindication? And as we have seen, not nearly enough is known about the effect of various possible sentences.

Sentencing policy, for centuries the preserve of the criminal lawyer, has now been invaded by the criminologist, the psychiatrist, and the social worker. Mannheim suggests that research into sentencing will one day give the Judiciary growing insight into its work and will eventually lead to changes in policy. Already penalties are the subject of statistical analysis. Comparisons are made of variations of sentence at different times and in different places. General principles underlying sentencing judgment are examined. Criminologists study differences in penalties imposed for both similar and dissimilar offences. Appellate decisions may provide a fruitful area of research.

Thus new disciplines are transforming sentencing from an apparently clear-cut and simple activity into a far more subtle and sophisticated process drawing upon many sources of knowledge.

A distinguished French Judge has said: "Because crime is a social fact and a human act, the process of dealing with crime is not completed once the offence has been legally defined and equated with a penalty imposed by law: there remains the need to understand crime as a social and individual phenomenon; the need to prevent its commission or repetition; the need, finally, for asking oneself what attitude is to be adopted towards the criminal."¹⁹

If the best possible sentence is imposed, it will reduce substantially the number of occasions when a sentence has to be given—the aim of all penal treatment. The award of the right sentence requires both sophisticated predictive techniques, and adequate and varied facilities. Without predictive techniques, sentencing must revert to a hit-and-miss procedure. Without proper facilities, the best sentence becomes a mere academic routine. The probation service, poised between the Judiciary and the Department of Justice, must play a vital and increasing role. The more probation is fortified by research into its predictive function, the more reliable and personalised will be its advice to the Courts.

"The criminal Courts of this country are undergoing nothing less than a revolution in attitude and practice. Sentencing is becoming dynamic activity instead of stale habit. The Courts now consider the future as well as the past, the offender as well as the offence."²⁰ To a growing degree, this can also be claimed for New Zealand.

It is inevitable that in many places this book should have questioned attitudes towards crime and punishment, and should have queried the utility of existing measures in relation to various classes of offender—

¹⁹Ancel, Marc, *Social Defence: A Modern Approach to Criminal Problems*. Routledge and Kegan Paul, 1965, p. 17.

²⁰Jarvis, F. V., *Criminology in Transition*. Tavistock Publication 1965, p. 62.

alcoholics, petty thieves, young female offenders, and so on. But nothing is to be served by pointing the finger at any particular group. If a reproach is called for, we are all responsible. There must be care to avoid sensationalism, if only because it generates its own problems. Many approaches must be used, many persons and agencies must be involved. But in the long run no laws or policies can be better than the society in which they exist. The best results will come from a society that is alert, responsive, and constructive. In dealing with crime and the criminal, New Zealand has yet to reach this standard.

APPENDIX 1

ARSON

Arson is an offence that is almost impossible to classify. On the face of it, arson is an offence of dishonesty, but in many cases anything in the nature of a "dishonest intent" is lacking. The Crimes Act reflects this uncertainty by including among "crimes against the person" the act of setting fire to any property with intent to do grievous bodily harm (s. 198). Arson proper is dealt with under the "criminal damage" sub-heading of crimes against property in ss. 294 and 296.

Motivations for arson may differ widely. There may be dishonest intent—as, for example, an attempt to collect insurance money. Alternatively sheer vandalism or spite may prompt the act. A desire for vengeance, or a homicidal intent, may be involved. Psychiatrists sometimes uncover an unconscious sexual motivation and describe the sexual satisfaction experienced by arsonists in such a category.

The following table summarises the statistics covering arson:

	Reported to Police	Convictions	Children's Court Cases
1961 ..	157	14	7
1962 ..	157	10	13
1963 ..	197	17	10
1964 ..	216	22	12
1965 ..	218	29	10

The ratio between convictions and cases reported to the police is fairly low. Of the 216 "offences reported" in 1964, further inquiry disclosed no offence in 36 cases. Only 46 prosecutions were actually instituted, and 121 cases, or 67 percent of those in which the commission of an offence was affirmed, remained uncleared at the end of the year. This was more or less comparable with the figure for offences of wilful damage in the same year. The number of convictions (including cases disposed of in the Children's Court) was 34.

Based on the "number of offences known to the police", the incidence of arson in New Zealand in recent years has been more than twice as great proportionately as in England and Wales. For example, the English total in 1964 was 1,564, barely seven times the New Zealand

figure. Caution, however, is necessary in drawing conclusions as the basis of compiling figures, as between the two countries, may not be comparable.

Three New Zealand cases illustrate the complex personality background found amongst many arsonists:

Case I—A.

Offences: false pretences (13); theft; assault; indecent assault on a male; indecent assault on a male (child); indecent assault on a female; unlawfully interfering with a fire alarm; attempted arson (2); arson (4); drunkenness (5).

A. suffered concussion as a four-year-old child. His parents died when he was 13 years old. According to him, his mother suffered from a thyroid condition and his father died of Bright's disease. A. was then placed in several foster homes by the Child Welfare Division. When he was 12 or 13 he was sexually assaulted and from that time was predominantly homosexual.

In 1939 he was committed to mental hospital and remained there for three years.

In 1955 the Court said of him: "The prisoner over the last nine years, since he was a young man of 23, has indulged in a great many crimes of a varied nature, so varied as to be unusual, because criminals generally carry out more or less the same sort of crimes, but here we have indecent assault on a male, indecent assault on a female, theft, false pretences, and now we have attempted arson. There must, of course, be something wrong with his mentality."

Case II—B.

Offences: 1940—aiding and abetting arson; 1949—buggery; 1957—indecent assault on a male.

B. was the second of three sons and was born in 1905. He married in 1925, was separated in 1946, and divorced in 1956. There were five children of the marriage.

His wife was a party to the offence of arson—an obvious attempt at burning their home in order to get insurance money. At that time B. was leasing his own farm.

In 1941 and 1942 he suffered from a hernia and the rupture was still present in 1957. In 1956 he was found to be suffering from diabetes. The inguinal hernia was apparently inoperable because of his diabetic condition. In this case physical illness was an additional factor influencing an unsatisfactory personality.

Case III—C.

Offences: 1945—aggravated assault (11), theft, mischief; 1948—theft from a dwelling house; 1950—assault, mischief; 1953—unlawfully on premises and interfering with a car; 1953—unlawfully on premises; 1955—unlawfully on premises; 1955—arson (5).

C. was born in 1919. His father deserted the home in 1920 and his mother was unable to provide for the children. C. and his sister were boarded out separately by the Child Welfare Division. He experienced considerable unhappiness as a child, both in foster homes and at school.

He became engaged before going overseas in 1940 and was bitterly disappointed to receive word in North Africa that his fiancée had broken the engagement. After severe bombing (he was acting as a locomotive fireman on a military train) he came back to New Zealand suffering from war neurosis.

He first lived with his mother and later made an unsatisfactory marriage. In 1945 he made his first Court appearance on 13 charges of assault—incidents in which he threw offensive matter, noxious fluids, and his own excreta at women.

In 1948 C. was released on three years' probation for theft, and two years later he was sentenced to one month in prison for assault and mischief. He was twice again in Court before being imprisoned for five years on five charges of arson. Most of the fires were lit in wardrobes containing women's clothing.

By now he was a fetishist (women's shoes and underclothing) and a transvestist. A psychiatrist described his condition as follows: "The condition consists primarily of a very strong pregenital fixation in the shape of anal aggressiveness. Combined with this is an equally strong scopophilic trend. In other words the sexual satisfaction is in looking and watching. The anal aggressiveness has of course also been sexualised so that one gets the considerable sexual arousal associated with soiling, especially women's frocks. A quite important combination of this, however, was the sight of the soiled frock. This gradually changed and "peeping Tom" activities became predominant with the occasional episode of arson."

Six of eight men serving prison sentences for arson in 1966 had received psychiatric attention at some time in their lives. It appears that many acts of arson are carried out by persons with abnormal or disturbed personalities.

APPENDIX 2

HISTORY OF ENGLISH VAGRANCY LAW

An examination of the vagrancy laws of England shows that the official response to poverty was persistently to punish the able-bodied and provide for the incapacitated. While the feudal structure, with its closely knit system of rights and obligations, survived, there was a place for those who were incapable of working, and they were maintained by local charity as necessary. The problem of vagrancy was then mainly concerned with thieves and robbers, who were dealt with by statutes prescribing branding and hanging.

Feudal bonds were becoming looser by the fourteenth century, however. They were finally torn apart by the Black Death in 1349.

The Black Death reduced the population by about one-third. The acute labour shortage which resulted led to an enormous increase in social mobility. But those who were unable to profit by the new freedom—the old, the ill, the unlucky, and the unwise—found themselves drifting unwillingly into poverty and mendicancy.

It was in this context that the earliest poor-law and vagrancy legislation was passed. The 1388 Act included two important clauses. One forbade anyone to relieve able-bodied beggars or wandering labourers who could not produce documents to prove that they were on their way to a specific job. The other gave impotent beggars the right to relief in their own parish.

These clauses mark the beginning of State interference in the problem of coping with poverty. What had been a purely local or ecclesiastical affair became, in the sixteenth century, increasingly the concern of Parliament. The dissolution of the monasteries made it imperative that public relief replace voluntary charity.

Thus 11 Hen. 7, c. 2 (1494) provided that:

“Vagabonds, idle and suspected persons, shall be set in stock three days and three nights, and have none other sustenance but bread and water, and then shall be put out of the town.

(2) And whosoever shall give such idle person more, shall forfeit xiid.

(3) Every beggar not able to work shall report to the Hundred where he last dwelled, is best known, or was born, and there remain upon the pain aforesaid.”

22 Hen. 8, c. 12 (1530) directed "how aged, poor, and impotent persons, compelled to live by alms, shall be ordered, and how vagabonds and beggars shall be punished."

27 Hen. 8, c. 25 (1535) compelled every sturdy vagabond to be kept in continual labour; governors of shires, etc., to find and keep every poor and infirm, or aged person who was born or had dwelt three years within their limit. Section (3) says: "A valiant beggar, or sturdy vagabond, shall at the first time be whipped and sent to the place where he was born or last dwelled by the space of three years, there to get his living; and if he continue his roguish life, he shall have the upper part of the gristle of his right ear cut off, and if after that he be taken wandering in idleness or doth not apply to his labour, or is not in service with any master, he shall be adjudged and executed as a felon."

There had been various municipal attempts at relief from early in the fifteenth century. In 1553, a scheme was drawn up by a committee of Londoners. Holinshed records that: "After sundry meetings . . . they agreed upon a book that they had devised, wherein they first considered of nine special kinds and sorts of poor people, and these same they brought in these three degrees: (1) The poor by impotency; (2) poor by casualty; (3) thriftless poor." The last class was divided into: (a) "the rioter that consumeth all"; (b) "the vagabond that will abide in no place"; (c) "the idle person, as the strumpet, and others."

All sixteenth, seventeenth, and eighteenth century legislation had the effect of helping the first two classes and punishing the third—the thriftless poor. The Vagrancy Act of 1824 differed from its predecessors only in that it was simply a punishment Act, and not, as earlier Acts were, partly a punishment Act and partly an Act for the relief of the poor. Through all this chain of statutes clear recognition was given to a class of unemployed poor persons who were unwilling to work, and whose idleness had to be punished, in order to remove a public menace.

It was against this class that the vagrancy laws were directed. In 1936 Scott, L. J. in *Ledwith v. Roberts*¹ from which this history of the relevant legislation has largely been taken,² made the following comment:

"It seems to me wrong that these old phrases should still be made the occasion of arrest and prosecution, when in their historical meaning they are so utterly out of keeping with modern life in England. The class against which the legislation was directed has ceased to exist. The poor law legislation and the increased industrial and commercial employment law of the nineteenth century together reduced it to much narrower proportions. The legislation of the twentieth century, unemployment insurance, national health insurance, public assistance,

¹[1936] 3 All E.R. 570.

²For a corresponding history of poor-law legislation see *Britain in the Sixties—Vagrancy*, by Philip O'Connor, (Penguin Special 1963) Chap. 2. Also the three volumes on Poor Law History in *English Local Government* by Sydney and Beatrice Webb (Longmans 1927).

and all the other social reforms of recent years have abolished it altogether. The old phrases have today lost their meaning, but they remain on the Statute Book as vague and indefinite words of reproach. Is it not time that our relevant statutes should be revised and that punishment and arrest should no longer depend on words which today have an uncertain sense and which nobody can truly apply to modern conditions? To retain such laws seems to me inconsistent with our national sense of personal liberty, our respect for the rule of law."

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